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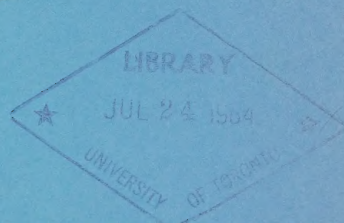
APRIL, 1964 -

MARCH 1965



ONTARIO

# *Monthly Report*



**ONTARIO LABOUR RELATIONS BOARD**

HD  
8109  
O5A5  
1964/65



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APPLICATION DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1964

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

7110-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HAYES  
STEEL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT  
THOROLD AND ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS  
ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, PROFESSIONAL ENGINEERS, PLANT  
NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A  
COOPERATIVE TRAINING BASIS, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER  
WEEK, EXECUTIVE SECRETARIES, INDUSTRIAL RELATIONS SPECIALIST, BUYERS, AND  
BUYER-SCHEDULERS." (47 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 30)

7713-63-R TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT)  
V. GENERAL LATEX AND CHEMICAL COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BRAMPTON, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF."  
(13 EMPLOYEES IN THE UNIT).

7752-63-R: HOTEL & RESTAURANT WORKERS' INTERNATIONAL UNION, LOCAL 197  
(APPLICANT) V. HAMILTON NAVAL VETERANS ASSOCIATION (RESPONDENT).

UNIT: "ALL TAPMEN AND BEVERAGE ROOM WAITERS EMPLOYED BY THE  
RESPONDENT AT HAMILTON." (2 EMPLOYEES IN THE UNIT).

7763-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. MASSEY-  
FERGUSON LIMITED, NORTH AMERICAN COMBINE PLANT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED ON  
PARK ROAD AND HENRY STREET IN BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS  
ABOVE THE RANK OF FOREMAN, TECHNICAL STAFF AND OFFICE STAFF."  
(524 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS SET OUT IN THE REPORT OF THE EXAMINER AND HAVING FURTHER REGARD TO THE EVIDENCE CONTAINED IN THE SAID REPORT, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED ON PARK ROAD AND HENRY STREET IN BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TECHNICAL STAFF AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT DIVISIONAL INSPECTORS AND SHIPPING INSPECTOR ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF FOREMAN, AND THAT THE CONFIDENTIAL CLERK TYPIST IN PRODUCTION AND THE CONFIDENTIAL CLERK TYPIST IN QUALITY CONTROL AND THE STORES RECORDS CLERKS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF OFFICE STAFF.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE RECEIVING - SHIPPING CLERK IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT EXPENSE STORES ATTENDANTS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT."

7781-63-R: THE CIVIC EMPLOYEES' UNION #58 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE MUNICIPALITY OF SHUNIAH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE CLERK-TREASURER IS A MEMBER OF THE OFFICE STAFF AND IS THEREBY EXCLUDED FROM THE BARGAINING UNIT DEFINED ABOVE."

7829-63-R: THE ATIKOKAN CIVIC EMPLOYEES LOCAL UNION #752 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF ATIKOKAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK-TREASURER, ENGINEER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES OF THE RESPONDENT BOUND BY SUBSISTING COLLECTIVE AGREEMENTS." (7 EMPLOYEES IN THE UNIT).

7831-63-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v.  
THE CORPORATION OF THE TOWNSHIP OF PICKERING (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS OFFICES IN THE TOWNSHIP OF PICKERING, SAVE AND EXCEPT TOWNSHIP CLERK, TREASURER, PLANNING DIRECTOR, WELFARE ADMINISTRATOR, BY-LAW ENFORCEMENT OFFICER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

7842-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. WILSON'S SUPERMARKET LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT SAULT STE. MARIE, SAVE AND EXCEPT STORE MANAGER, MEAT MANAGER, PRODUCE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT MANAGER AND PRODUCE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE HEAD CASHIER IS INCLUDED IN THE BARGAINING UNIT. THE BOARD'S DETERMINATION CONCERNING THE EXCLUSION OF THE MEAT MANAGER IS BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IN THIS MATTER. THE BOARD'S DETERMINATION EXCLUDING THE PRODUCE MANAGER IS BASED ON THE AGREEMENT OF THE PARTIES THAT THE EVIDENCE RESPECTING THE MEAT MANAGER SHOULD APPLY TO THE PRODUCE MANAGER AS WELL."

7856-63-R: GALT TYPOGRAPHICAL UNION LOCAL 411 (APPLICANT) v.  
THE EVENING REPORTER (RESPONDENT).

UNIT: "ALL PROOFREADERS IN THE EMPLOY OF THE RESPONDENT AT GALT, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

7917-63-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL #1081 (APPLICANT) v. WOLFOND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN WRECKING OR DEMOLITION IN THE TOWNSHIPS OF PUSLINCH, NICHOL, PILKINGTON, GUELPH AND ERAMOSA IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT EMPLOYEES ENGAGED IN THE YARD OPERATIONS OF THE RESPONDENT ARE NOT INCLUDED IN THE BARGAINING UNIT."

8038-63-R: HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197,  
HAMILTON (APPLICANT) V. KENILWORTH HOUSE LIMITED (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN, EMPLOYED BY THE  
RESPONDENT IN ITS KENILWORTH HOUSE HOTEL AT HAMILTON."  
(7 EMPLOYEES IN THE UNIT)

(AGREEMENT OF THE PARTIES).

8039-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HILL  
REFRIGERATION OF CANADA DIVISION INTERNATIONAL HARDWARE COMPANY OF  
CANADA (1963) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(62 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8093-63-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL  
268 (APPLICANT) V. LAKEHEAD ANSWERING SERVICE (RESPONDENT).

UNIT: "ALL TELEPHONE ANSWERING OPERATORS IN THE EMPLOY OF THE  
RESPONDENT AT FORT WILLIAM AND PORT ARTHUR." (3 EMPLOYEES IN THE UNIT).

8106-63-R: HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197,  
HAMILTON (APPLICANT) V. COLONIAL HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE  
RESPONDENT AT THE COLONIAL HOUSE IN HAMILTON." (4 EMPLOYEES IN THE UNIT).

8107-63-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V.  
S. F. LAWASON & COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES  
STAFF." (2 EMPLOYEES IN THE UNIT).

8119-63-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE  
EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. THE TORONTO DRIVING CLUB  
LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-  
MUTUEL DEPARTMENT SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS,  
ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN  
CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS,  
PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF."  
(192 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 33 )



8120-63-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. JAMES CHEVROLET OLDSMOBILE LTD. (RESPONDENT).

UNIT: "ALL AUTOMOBILE SALESMEN IN THE EMPLOY OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (15 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

8144-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 2679 (APPLICANT) V. INTERNATIONAL COOPERAGE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (39 EMPLOYEES IN THE UNIT).

8146-63-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. ANSCO OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT COOKSVILLE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

8147-63-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. MCKAYE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

8150-63-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. FOOTWEAR FASHIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (40 EMPLOYEES IN THE UNIT).

8161-63-R: GENERAL TRUCK DRIVERS LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. ALL-TYPE CONTAINERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

8162-63-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. EDDY INDUSTRIAL PRODUCTS COMPANY A DIVISION OF EDDY MATCH COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

8163-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 3233, AFFILIATED WITH THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) v. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF NORTH GWILLIMBURY IN THE COUNTY OF YORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"IN THE ABSENCE OF ANY EVIDENCE RESPECTING BARGAINING FOR THE AREA SOUGHT BY THE APPLICANT OR OF ANY COLLECTIVE AGREEMENTS COVERING THIS AREA, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF NORTH GWILLIMBURY IN THE COUNTY OF YORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING."

8173-63-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) v. S. McCORD & Co. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, OFFICE STAFF AND PERSONS BOUND BY SUBSISTING COLLECTIVE AGREEMENTS." (24 EMPLOYEES IN THE UNIT).

8174-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. FIRECO SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (67 EMPLOYEES IN THE UNIT).

8178-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HAUSMAN LTD. (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND ERECTORS." (16 EMPLOYEES IN THE UNIT).

8183-63-R: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL No. 3 GUELPH ONTARIO (APPLICANT) v. ABEL CONSTRUCTION (RESPONDENT).

UNIT: "ALL BRICKLAYERS, BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"IN THIS APPLICATION THE AREA PROPOSED BY THE APPLICANT CONSISTS OF THE COUNTY OF WELLINGTON AND THE COUNTY OF DUFFERIN EXCEPTING THE TOWNSHIP OF MULMUR. THIS WAS THE SAME AREA SOUGHT BY THE APPLICANT IN BALL BROTHERS LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST, 1963, P. 279. IN THAT CASE THE BOARD FOUND ON THE EVIDENCE BEFORE IT "PRIMA FACIE, THEREFORE THE APPLICANT WOULD APPEAR TO BE ENTITLED TO THE AREA IT SEEKS..." HOWEVER, THE BOARD GRANTED A SUBSTANTIALLY SMALLER AREA, ONE PROPOSED BY THE RESPONDENT, BALL BROTHERS LTD. NOTWITHSTANDING THIS FACT, THE RESPONDENT IN THAT CASE SUBSEQUENTLY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT FOR THE LARGER AREA PROPOSED BY THE APPLICANT IN THE PRESENT CASE. THE APPLICANT RELIES ON THIS IN FURTHER SUPPORT OF ITS CLAIM THAT IT HAS ESTABLISHED A PATTERN OF COLLECTIVE BARGAINING, FOR THE AREA SOUGHT IN THE PRESENT CASE.

HOWEVER, AS WAS POINTED OUT IN BALL BROTHERS LTD. (SUPRA), THE FACT THAT A PARTICULAR UNION HAS ESTABLISHED A PATTERN OF COLLECTIVE BARGAINING FOR A GIVEN AREA IS NOT THE ONLY FACTOR WHICH THE BOARD TAKES INTO CONSIDERATION. THE JURISDICTIONS OF OTHER LOCAL UNIONS IN THE AREA AND THE PATTERN OF COLLECTIVE BARGAINING OF THE OTHER UNIONS MUST ALSO BE CONSIDERED. IN OTHER WORDS, THE BOARD IS ANXIOUS AS FAR AS POSSIBLE, TO ESTABLISH AREAS WHICH WILL BE UNIFORM FOR EMPLOYERS AND TRADE UNIONS ALIKE.

ON THE EVIDENCE PRESENTLY BEFORE THE BOARD THERE IS ANYTHING BUT UNIFORMITY ON THE QUESTION OF AREA. THE CARPENTERS BARGAIN FOR FIVE TOWNSHIPS IN THE COUNTY OF WELLINGTON, AN AREA SET BY THE BOARD IN A NUMBER OF DECISIONS AS AN INTERIM MEASURE ONLY. THE BRICKLAYERS BARGAIN FOR THE COUNTIES OF WELLINGTON AND DUFFERIN SAVE AND EXCEPT THE TOWNSHIP OF MULMUR. THE HOD CARRIERS HAVE BARGAINED FOR THE COUNTY OF WELLINGTON AND RECENTLY HAVE SIGNED AN AGREEMENT FOR THE COUNTIES OF PERTH, WELLINGTON AND WATERLOO. THE HOD CARRIERS ALSO HAVE CURRENT COLLECTIVE AGREEMENTS COVERING THE CITIES OF KITCHENER AND WATERLOO AND A PORTION OF THE TOWNSHIP OF WATERLOO. THE OPERATING ENGINEERS HAVE FILED A COLLECTIVE AGREEMENT WITH THE BOARD FOR HOISTING ENGINEERS WORKING IN OR OUT OF THE COUNTY OF WELLINGTON. SEPARATE COLLECTIVE AGREEMENTS EXIST FOR AN AREA SURROUNDING GALT AND PRESTON. IT IS NOTED THAT SOME OF THE AREAS PROPOSED IN RECENT CASES BEFORE THE BOARD OR SET OUT IN COLLECTIVE AGREEMENTS FILED WITH THE BOARD WOULD GROUP TOGETHER ONE OR MORE AREAS NORMALLY BARGAINED FOR SEPARATELY BY BUILDERS' EXCHANGES ON BEHALF OF THE GROUPS OF EMPLOYERS.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, WE FIND IT DIFFICULT TO SAY, ON THE BASIS OF THE EVIDENCE BEFORE US, WHETHER DUFFERIN AND WELLINGTON FORM AN APPROPRIATE AREA OR WHETHER IT WOULD BE MORE SATISFACTORY TO GROUP WATERLOO AND WELLINGTON TOGETHER. IT MAY BE THAT THE APPROPRIATE AREA IS WATERLOO, WELLINGTON AND DUFFERIN, OR IT MAY BE THAT EACH COUNTY IS AN APPROPRIATE AREA IN ITSELF. IT IS NOT WITHOUT INTEREST TO NOTE, IN PASSING, THAT A TORONTO LOCAL OF THE CARPENTERS HAS RECENTLY PROPOSED THE INCLUSION OF ORANGEVILLE (WHICH IS IN THE COUNTY OF DUFFERIN) INTO THE TORONTO AREA.

WHILE THEREFORE WE DO NOT INTEND IN THE PRESENT CASE TO GRANT THE AREA PROPOSED, IN ALL THE CIRCUMSTANCES SET OUT ABOVE, WE HAVE REACHED THE CONCLUSION THAT THE FIVE-TOWNSHIP AREA GRANTED IN PREVIOUS CASES IS NO LONGER TO BE REGARDED AS APPROPRIATE. AFTER DUE CONSIDERATION WE HAVE COME TO THE CONCLUSION THAT AN APPROPRIATE AREA WOULD CONSIST OF THE COUNTY OF WELLINGTON. HOWEVER, THIS DECISION MUST NOT BE TAKEN AS NECESSARILY REPRESENTING THE FINAL THINKING OF THE BOARD ON THIS SUBJECT."

8185-63-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL  
UNIT N 47 (APPLICANT) V. ALEXANDER METAL PRODUCTS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"AT THE COMMENCEMENT OF THE HEARING OF THIS CASE, COUNSEL FOR THE RESPONDENT, WHO INDICATED THAT HE WAS ACTING AS TORONTO AGENT FOR A FIRM OF SOLICITORS, MESSRS. QUAIN AND QUAIN, IN OTTAWA, INFORMED THE BOARD THAT HE HAD BEEN INSTRUCTED TO MAKE CERTAIN DISCLOSURES TO THE BOARD CONCERNING A DOCUMENT (HEREIN CALLED THE PETITION) FILED IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT. THESE DISCLOSURES WERE THAT THE EMPLOYER'S SOLICITORS, MESSRS. QUAIN AND QUAIN, HAD PREPARED THE PETITION AND THAT THE EMPLOYER WAS PAYING THE TRAVELLING AND OTHER EXPENSES FOR MR. LAPALME'S TRIP TO TORONTO TO GIVE EVIDENCE BEFORE THE BOARD IN SUPPORT OF THE PETITION. MR. LAPALME WAS THE ONLY WITNESS AT THE HEARING WHO TESTIFIED IN SUPPORT OF THE PETITION.

THE EVIDENCE GIVEN BY MR. LAPALME DISCLOSES THE FOLLOWING EVENTS TAKING PLACE ANTECEDENT TO AND SURROUNDING THE PREPARATION, CIRCULATION AND SUBMISSION OF THE PETITION TO THE BOARD. DURING WORKING HOURS ON FRIDAY, APRIL 3RD, 1964, THE RESPONDENT COMPANY CONVENED A MEETING IN THE PLANT LUNCH ROOM OF ALL OR MOST OF THE EMPLOYEES OF THE COMPANY. MR. FARRELL, THE GENERAL MANAGER OF THE COMPANY, ATTENDED THE MEETING AND ADDRESSED THE EMPLOYEES. AMONG OTHER THINGS, THE SUBSTANCE OF HIS REMARKS MADE IT ABUNDANTLY PLAIN TO THEM THAT THE COMPANY DID NOT WANT A UNION IN THE PLANT AND THAT, IF THE EMPLOYEES WANTED TO PROTECT THEIR JOBS IN SLACK TIMES AND WANTED A PENSION PLAN, THEY HAD BETTER DO SOMETHING TO STOP THE UNION FROM COMING IN. AFTER SPEAKING TO THE EMPLOYEES FOR ABOUT HALF AN HOUR HE TOLD THEM THAT HE WAS GOING TO LEAVE THE ROOM BUT THAT HE WANTED THEM TO REMAIN TO DECIDE THAT AFTER-NOON, WHETHER THEY WERE GOING TO LET THE UNION BE CERTIFIED OR WHETHER THEY WOULD TAKE SOME ACTION TO PREVENT IT FROM BEING CERTIFIED. ON HIS RETURN TO THE ROOM 10 MINUTES LATER THEY INFORMED HIM THAT THEY HAD NOT MADE A DECISION AND THAT THEY WANTED MORE TIME TO THINK ABOUT IT. MR. LAPALME WAS CANDID TO ADMIT THAT IT WAS WHAT THEIR EMPLOYER HAD TOLD THEM AT THIS MEETING ABOUT THEIR JOBS AND THE PENSION PLAN WHICH CAUSED THE EMPLOYEES TO CHANGE THEIR MINDS ABOUT SUPPORTING THE UNION. ON THE FOLLOWING MONDAY, APRIL 6TH,



MR. FARRELL SPOKE TO MR. LAPALME IN FRONT OF OTHER EMPLOYEES IN THE PLANT AND TOLD HIM THAT A GOVERNMENT MAN WAS COMING WHO WOULD HAVE AN OFFICIAL PAPER FOR THE EMPLOYEES TO SIGN TO HAVE THE UNION'S APPLICATION FOR CERTIFICATION ANNULLED. DURING THE COURSE OF HIS WORK ON TUESDAY MORNING, APRIL 7TH, MR. LAPALME WAS IN MR. FARRELL'S OFFICE AND SAW THE UNSIGNED PETITION LYING ON MR. FARRELL'S DESK. HE STATES THAT HE PICKED UP AND READ THE PETITION IN THE PRESENCE OF MR. FARRELL. AT THIS TIME HE SAYS HE BELIEVED THAT THIS WAS THE PAPER WHICH THE GOVERNMENT MAN HAD BROUGHT. MR. LAPALME THEN TOOK THE PETITION OUT OF THE OFFICE TO GET THE EMPLOYEES TO SIGN IT. AS HE WAS TAKING IT OUT OF THE OFFICE, MR. FARRELL REMARKED TO HIM, "YOU KNOW WHAT THAT IS", HE REPLIED, "YES". MR. LAPALME THEN TOOK THE PETITION AROUND TO WHERE THE EMPLOYEES WERE WORKING AND HAD THEM SIGN IT. LATER IN THE MORNING OF APRIL 7TH HE RETURNED IT TO FARRELL'S DESK BEARING THE SIGNATURES OF 13 EMPLOYEES. A DAY OR SO LATER, FARRELL SUMMONED LAPALME TO HIS OFFICE AND TOLD HIM THAT HE WAS TO SEE THE COMPANY'S LAWYER THAT AFTERNOON AT 3:30 ABOUT THE PETITION. LAPALME WENT TO THE LAWYER'S OFFICE AT THE APPOINTED TIME AND WAS TOLD, AMONG OTHER THINGS, THAT HE WOULD HAVE TO GO TO TORONTO TO TESTIFY BEFORE THE BOARD AND THAT FOR SUCH PURPOSE HIS TRAVELLING AND OTHER EXPENSES WOULD BE PAID BY HIS EMPLOYER. THE EMPLOYER LATER PURCHASED HIS TRAIN TICKETS AND PAID HIS EXPENSES FROM OTTAWA TO TORONTO.

IN OUR OPINION, THE EVIDENCE IN THIS CASE DEMONSTRATES A STUDIED DISREGARD ON THE PART OF MANAGEMENT FOR THE FUNDAMENTAL RIGHTS OF ITS EMPLOYEES UNDER THE LABOUR RELATIONS ACT TO BE FREE TO DECIDE FOR THEMSELVES AND TO EXPRESS THEIR OWN WISHES, AS DISTINCT FROM THE WISHES OR BEHESTS OF THEIR EMPLOYER, AS TO WHETHER THEY WANT OR DID NOT WANT TO BE REPRESENTED IN COLLECTIVE BARGAINING BY A TRADE UNION. WE ARE NOT IMPRESSED BY THE CLAIM THAT THE EMPLOYER ACTED IN IGNORANCE AND DID NOT KNOW THAT WHAT IT WAS DOING WAS PROHIBITED AS AN UNFAIR LABOUR PRACTICE UNDER THE LABOUR RELATIONS ACT. THE FACT IS THAT THE EMPLOYER DELIBERATELY TOOK STEPS WHICH IT KNEW OR MUST BE TAKEN TO HAVE KNOWN WOULD BRING INTIMIDATORY PRESSURE AND UNDUE INFLUENCE TO BEAR ON THE EMPLOYEES TO CHANGE THEIR MIND ABOUT THE UNION AND TO COMPLY WITH THE STATED DESIRES OF MANAGEMENT THAT THERE BE NO UNION.

IT IS QUITE CLEAR THAT THE BEST AND MOST RELIABLE EVIDENCE OF THE TRUE AND UNINHIBITED WISHES OF THE EMPLOYEES IS TO BE FOUND IN THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION. WE ARE SATISFIED THAT THE PETITION WHICH PURPORTS TO EXPRESS OPPOSITION ON THE PART OF THE SIGNATORY-EMPLOYEES TO THE CERTIFICATION OF THE APPLICANT EXPRESSES NOT THE TRUE WISHES OF THE EMPLOYEES, WHO HAD NO REAL CHOICE BUT TO SIGN IT, BUT THE OPPOSITION OF MANAGEMENT. TO DENY OUTRIGHT CERTIFICATION IN THIS CASE WOULD BE TO ENCOURAGE AND TO CONDONE THE USE OF UNFAIR LABOUR PRACTICES AS A DEVICE FOR DISSUADING EMPLOYEES FROM THE FREE EXERCISE OF THEIR RIGHTS UNDER THE ACT TO DECIDE FOR THEMSELVES, AS THEY SEE FIT, WHETHER THEY WANT OR ~~DO~~ NOT WANT TO BE REPRESENTED IN COLLECTIVE BARGAINING BY A TRADE UNION."

8186-63-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) v. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

8211-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. RAPISTAN CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

8226-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PREMIER PACKAGING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

8245-63-R: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN DUNDAS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE BOARD'S DECISION IN THE LONDON FOOD CITY CASE, BOARD FILE NO. 4129-62-R, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, AUGUST, 1962).

8256-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. S. F. BOWSER COMPANY LIMITED (SERVICE DEPARTMENT, HAMILTON) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (5 EMPLOYEES IN THE UNIT).

8258-64-R: KINGSTON TYPOGRAPHICAL UNION LOCAL 204 (APPLICANT) v. FOSTER AND NORTH PRINTERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COMPOSING ROOM AT KINGSTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

8259-64-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. EXPORT EXPRESS LINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

8263-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC  
(APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE IN K-MART CENTRE, IN WHITBY TOWNSHIP, SAVE AND EXCEPT ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(63 EMPLOYEES IN THE UNIT).

8264-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. KENDAN MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SANDWICH EAST TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(20 EMPLOYEES IN THE UNIT).

8277-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. HILL-CLARK-FRANCIS, LIMITED (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(13 EMPLOYEES IN THE UNIT).

8278-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. FAGERSTA STEELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(11 EMPLOYEES IN THE UNIT).

8279-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. H. E. KERR INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(23 EMPLOYEES IN THE UNIT).

8289-64-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (APPLICANT) v. MILNE STEEL FABRICATING CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(43 EMPLOYEES IN THE UNIT).

8292-64-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. NOREN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE RESPONDENT."  
(3 EMPLOYEES IN THE UNIT).



8293-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) v. CHESLEY-SARNES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ESSEX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

8295-64-R: INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. CLOUTIER BROS. DIAMOND DRILLING CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF COBALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

8301-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. LAKE ONTARIO STEEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN. PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

8302-64-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No.1, N.C.C.L. (APPLICANT) v. L'ABBE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (59 EMPLOYEES IN THE UNIT).

8303-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, (APPLICANT) v. MANNING BISCUIT CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL DRIVERS AND WAREHOUSEMEN OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

8323-64-R: TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ISLAND OF BOB-LO COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ON THE ISLAND OF BOB-LO EMPLOYED IN THE MAINTENANCE DEPARTMENT AND IN THE PARK CREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

8343-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793  
(APPLICANT) v. FLOYD DUNFORD LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PETERBOROUGH ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE WORDS "SIMILAR EQUIPMENT" INCLUDE BACKHOES, DRAGLINES, FRONT END LOADERS AND GRADERS."

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

7846-63-R: OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 343 (APPLICANT) v. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT BUSINESS AGENT AND EXECUTIVE OFFICERS, PERSONS ABOVE THE RANKS OF BUSINESS AGENT AND EXECUTIVE OFFICER." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED	
ELIGIBILITY LIST	2
NUMBER OF BALLOTS CAST	2
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	0

8086-63-R: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) v. NEWLANDS-HARDING YARNS LIMITED (RESPONDENT) v. GALT TEXTILE WORKERS' UNION, BRANCH No.1, N.C.C.L., (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF WATERLOO AND WELLINGTON, SAVE AND EXCEPT SUPERVISORS, FOREMEN, ASSISTANT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN, ASSISTANT FOREMAN AND FORELADY, LABORATORY PERSONNEL AND OFFICE STAFF." (597 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

NUMBER OF NAMES ON REVISED	
ELIGIBILITY LIST	358
NUMBER OF BALLOTS CAST	357
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	214
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	142

8088-63-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. LANARK MANUFACTURING COMPANY (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE NO. 2075 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNNVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(541 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		457
NUMBER OF BALLOTS CAST		453
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	283	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF INTERVENER	168	

8112-63-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. COCA-COLA LTD. (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN AND SPECIAL SALESMEN, PERSONS ABOVE THE RANKS OF FOREMAN AND OFFICE STAFF." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		41
NUMBER OF BALLOTS CAST		39
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS SEGREGATED		
(NOT COUNTED)	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	32	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF INTERVENER	3	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

7693-63-R: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) v. THE SMITH MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, PLANT GUARDS, OFFICE AND CLERICAL EMPLOYEES." (103 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		113
NUMBER OF BALLOTS CAST		109
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	63	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	45	



7854-63-R: CANADIAN STEELWORKERS' UNION EL MECH DIVISION (APPLICANT) v.  
EL MECH TOOLS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STORES SUPERINTENDENT, OFFICE AND  
SALES STAFF, SECURITY WATCHMEN, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION  
PERIOD." (56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST		53
NUMBER OF BALLOTS CAST		53
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	29	
NUMBER OF BALLOTS MARKED AS OPPOSED TO APPLICANT	23	

APPLICATIONS FOR CERTIFICATION DISMISSED

NO VOTE CONDUCTED

7902-63-R: COMMUNICATION WORKERS OF AMERICA (APPLICANT) v. NORTHERN  
ELECTRIC COMPANY LIMITED (RESPONDENT) v. NORTHERN ELECTRIC EMPLOYEE  
ASSOCIATION. (1217 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"IN THE COURSE OF ITS EXAMINATION OF THE DOCUMENTARY  
EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT UNION HEREIN AND  
THE DOCUMENTS CONTAINING SIGNATURES OF THE EMPLOYEES FILED BY  
THE RESPONDENT, CERTAIN APPARENT DISCREPANCIES IN THE SIGNATURES  
ON A SUBSTANTIAL NUMBER OF UNION CARDS CAME TO THE ATTENTION OF  
THE BOARD. FOLLOWING ITS USUAL PRACTICE IN SUCH CIRCUMSTANCES,  
THE BOARD INSTRUCTED ITS EXAMINERS TO INTERVIEW THE EMPLOYEES  
CONCERNED. A NUMBER OF THE PERSONS INTERVIEWED INFORMED THE  
EXAMINERS THAT THEY HAD NOT SIGNED THE MEMBERSHIP CARDS, PURPORT-  
ING TO BEAR THEIR SIGNATURES, WHICH THE APPLICANT UNION HAD  
SUBMITTED TO THE BOARD AS EVIDENCING THEIR MEMBERSHIP IN THE  
APPLICANT. THE EXAMINERS WERE INSTRUCTED TO PURSUE THEIR  
INVESTIGATIONS BUT, ON APRIL 3, 1964, BEFORE THEY HAD COMPLETED  
THEIR INVESTIGATIONS AND BEFORE A HEARING WAS SCHEDULED, AS IT  
UNDOUBTEDLY WOULD HAVE BEEN, THE REGISTRAR RECEIVED THE FOLLOWING  
LETTER FROM COUNSEL FOR THE APPLICANT:

SINCE THE HEARING IN THE ABOVE-MENTIONED MATTER,  
THE APPLICANT HAS BEEN MADE AWARE, THROUGH ITS MEMBERS  
EMPLOYED BY THE RESPONDENT, OF THE PRESENCE OF AN  
EXAMINER FROM YOUR BOARD. WE WERE INFORMED THAT  
QUESTIONS WERE BEING ASKED BY THE EXAMINER OF THE  
EMPLOYEES REGARDING THEIR MEMBERSHIP IN THE APPLICANT.

AS A RESULT OF THIS MATTER BEING BROUGHT TO THE  
ATTENTION OF THE APPLICANT, THE DIRECTOR OF DISTRICT  
10 OF THE COMMUNICATION WORKERS OF AMERICA, MR.  
WILLIAM DUNN, CAUSED AN INQUIRY TO BE MADE. THE  
APPLICANT HAS FOUND THAT CERTAIN LOCAL PERSONS WHO  
ASSISTED IT IN THE ORGANIZING CAMPAIGN HAVE ENGAGED  
IN UNAUTHORIZED PRACTICES WHICH NEITHER IT NOR THE  
BOARD COULD CONDONE.

IN VIEW OF THESE UNFORTUNATE EVENTS, THE APPLICANT REQUESTS LEAVE FROM THE BOARD TO WITHDRAW ITS APPLICATION IN THIS CASE. IN DOING SO, THE APPLICANT WOULD LIKE TO MAKE CLEAR THAT IT REGRETS THE EVENTS WHICH HAVE TRANSPIRED. ON BEHALF OF MR. DUNN, I AM INSTRUCTED TO ALSO MAKE CLEAR THAT IT DOES NOT COUNTENANCE FOR ONE MOMENT THE ACTIONS OF CERTAIN ILL-ADVISED AND INEXPERIENCED PERSONS WHO HAVE HURT RATHER THAN FURTHERED ITS CAUSE.

IN ASKING FOR LEAVE TO WITHDRAW, THE APPLICANT WOULD LIKE TO EXPRESS ITS SINCEREST APOLOGIES.

COPIES OF THIS LETTER WERE FORWARDED TO THE OTHER PARTIES FOR COMMENT. THE RESPONDENT WROTE TO THE BOARD THAT IT HAD "NO OBJECTIONS TO THE COMMUNICATION WORKERS OF AMERICA WITHDRAWING THEIR APPLICATION FOR CERTIFICATION." COUNSEL FOR THE INTERVENER SUBMITTED THAT "THE APPLICANT OUGHT NOT TO BE ENTITLED TO WITHDRAW ITS APPLICATION BUT RATHER, THE APPLICATION SHOULD BE DISMISSED BY THE BOARD." HE REFERRED THE BOARD TO THE DECISION IN THE FALCONBRIDGE NICKEL MINES CASE, BOARD FILE 3114 -61-R.

IN ALL THE CIRCUMSTANCES OF THIS CASE THE BOARD IS OF OPINION THAT THE APPLICATION SHOULD BE DISMISSED AND THE APPLICATION IS ACCORDINGLY DISMISSED.

THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES IN THE BARGAINING UNIT CONCERNED IN THIS APPLICATION WITHIN A PERIOD OF SIX MONTHS FROM THE DATE HEREOF."

8141-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. KENDAN MFG. LTD. (RESPONDENT). (21 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT FAILED TO FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE.

THIS APPLICATION THEREFORE IS DISMISSED."

8159-63-R: SPORTSWEAR LOCAL 199, INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) V. SUMMIT SPORTSWEAR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOPS IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF."  
(70 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 34 )

8246-64-R: EMPLOYEES COUNCIL OF LIFE SAVERS LIMITED HAMILTON (APPLICANT) V. LIFE SAVERS LIMITED (RESPONDENT). (93 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 35 ).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

7156-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, MILLMEN & LUMBER-YARD WORKERS OF AMERICA, LOCAL 2737 (APPLICANT) V. FONTHILL LUMBER LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN ITS PLANT AND YARDS AT FONTHILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER ON REVISED	
ELIGIBILITY LIST	8
NUMBER OF BALLOTS CAST	8
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	7

7598-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL #1071 (APPLICANT) V. HARTWIG CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES: (INTER ALIA).... THAT DESMOND KELLY, NOT BEING PRESENT ON THE DATE OF THE MAKING OF THE APPLICATION, IS NOT THEREFORE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT."

NUMBER OF NAMES ON REVISED	
ELIGIBILITY LIST	15
NUMBER OF BALLOTS CAST	15
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	11

7675-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORONT STEEL CONSTRUCTION COMPANY LTD. (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, SECRETARY TO THE MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		12
NUMBER OF BALLOTS CAST	11	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	10	

7731-63-R: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS' AFL.CIO.CLC (APPLICANT) V. THE CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, MANAGERS, GENERAL FOREMEN, FOREMEN, PROCESS ENGINEERS, SPECIALISTS PROCESS-ENGINEERING, SPECIALISTS PROCESS-CONTROL, SPECIALISTS CUSTOMER-PROCEDURES, NURSES, STUDENTS AND EMPLOYEES ON BUSINESS TRAINING COURSES, BUYERS, SENIOR COST CLERKS AND SECRETARY TO THE PLANT MANAGER." (21 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		20
NUMBER OF BALLOTS CAST	20	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	10	

7738-63-R: TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HAROLD SWEET & SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF SANDWICH SOUTH TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		5
NUMBER OF BALLOTS CAST	5	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	3	

7756-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LAU PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (61 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		56
NUMBER OF BALLOTS CAST		
NUMBER OF SEGREGATED BALLOTS		
NOT COUNTED	9	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	27	

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOLLOWING THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN THIS MATTER AND THE COUNTING OF THE UNSEGREGATED BALLOTS WHICH WERE CAST, A DOCUMENT DATED APRIL 6TH, 1964 SIGNED BY THE SOLICITORS FOR THE APPLICANT, THE RESPONDENT AND THE GROUP OF EMPLOYEES WAS FILED WITH THE BOARD. BY THE TERMS OF THE DOCUMENT, THE APPLICANT AGREES TO THE DISMISSAL OF THIS APPLICATION WITHOUT FURTHER INQUIRY INTO THE STATUS, DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES WHOSE VOTES HAD BEEN CHALLENGED AND SEGREGATED. THE RESPONDENT AND THE GROUP OF EMPLOYEES CONSENT TO THE AGREEMENT OF THE APPLICANT.

HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THIS APPLICATION IS DISMISSED."

7934-63-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SCOTT'S BOX LUNCH LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, AND PERSONS ABOVE THE RANK OF SUPERVISOR." (24 EMPLOYEES IN THE UNIT).

ON MARCH 25, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE RESPONDENT FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EFFECTIVE OCTOBER 1ST, 1956 TO SEPTEMBER 30TH, 1957, WITH YEAR\*TO YEAR RENEWAL SUBJECT TO NOTICE. ON THE EVIDENCE BEFORE US, THE BOARD FINDS THAT THE APPLICANT HAS ABANDONED ITS BARGAINING RIGHTS FOR THE UNIT OF EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT AND NO LONGER REPRESENTS THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

NUMBER OF NAMES ON		
ELIGIBILITY LIST		27
NUMBER OF BALLOTS CAST		
NUMBER OF BALLOTS SPOILED	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	20	

7952-63-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) v. BRUELL PAVING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, TEMPORARY SHOP EMPLOYEES, ENGINEERING STAFF AND SECURITY GUARDS."  
(14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON		
ELIGIBILITY LIST		8
NUMBER OF BALLOTS CAST		8
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	6	

8068-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. THE BURROWES MANUFACTURING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		28
NUMBER OF BALLOTS CAST		28
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO APPLICANT	-20	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

8181-63-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION: HOTEL & RESTAURANT EMPLOYEES' UNION - 756 - ST. CATHARINES, ONT. (APPLICANT) v. ELLIOT HOTEL (RESPONDENT). (5 EMPLOYEES).

8182-63-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION: HOTEL & RESTAURANT EMPLOYEES UNION - 756 - ST. CATHARINES, ONTARIO (APPLICANT) v. STAR HOTEL (RESPONDENT). (15 EMPLOYEES).

8257-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. KNIGHT INDUSTRIES LIMITED (RESPONDENT). (43 EMPLOYEES).

8253-63-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE HOSPITAL COMMISSION, SARNIA GENERAL HOSPITAL (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220 (INTERVENER). (7 EMPLOYEES).

8291-64-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) v. DIAMOND WATERPROOFING LTD. (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING APRIL

7039-63-R: PAUL SPENCER (APPLICANT) v. OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 131 AFL-CIO (RESPONDENT). (WITHDRAWN). (64 EMPLOYEES).

(RE: DUNLOP CANADA LIMITED,  
WHITBY, ONTARIO)

7570-63-R: EMPLOYEES OF THE CHESLEY-SARNES LTD. (APPLICANT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA ON BEHALF OF ITS LOCAL UNION 14993 (RESPONDENT). (GRANTED). (13 EMPLOYEES).

(RE: CHESLEY-SARNES LIMITED,  
ESSEX, ONTARIO).

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		9
NUMBER OF BALLOTS CAST	9	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO RESPONDENT	9	

7656-63-R: HERMAN DEVER, ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) v. SUDBURY GENERAL WORKERS UNION LOCAL 101 CANADIAN LABOUR CONGRESS (RESPONDENT) v. THE GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED (INTERVENER). (GRANTED) (12 EMPLOYEES).

(RE: THE GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED,  
ELM STREET WEST,  
SUDBURY, ONTARIO)

NUMBER OF NAMES ON REVISED		
ELIGIBILITY LIST		12
NUMBER OF BALLOTS CAST	12	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF RESPONDENT	2	
NUMBER OF BALLOTS MARKED AS		
OPPOSED TO RESPONDENT	10	

8229-64-R: LAVERNE REPTKE (APPLICANT) v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (RESPONDENT) v. GAMBLE ROBINSON LTD. (INTERVENER). (GRANTED). (8 EMPLOYEES).

(RE: GAMBLE ROBINSON LTD.,  
KITCHENER, ONTARIO)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT APPLIED FOR A DECLARATION TERMINATING  
THE BARGAINING RIGHTS OF THE RESPONDENT.

THE RESPONDENT ON APRIL 5TH, 1964 WROTE THE FOLLOWING LETTER TO THE BOARD:

"PLEASE BE ADVISED WE HEREBY ABANDON ANY CLAIMS TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT REFERRED TO, AND, THEREFORE, WILL NOT MAKE REPRESENTATION AT THE SCHEDULED HEARING."

THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF GAMBLE ROBINSON LTD. AT KITCHENER, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION  
DISPOSED OF DURING APRIL, 1964.

7167-63-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) V. WONDER BAKERIES LIMITED (HAMILTON) RESPONDENT) V. RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461 (PREDECESSOR). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 36 )

APPLICATION FOR DETERMINATION UNDER SECTION 79  
DISPOSED OF DURING APRIL

7027-63-M: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. POWELL AND GROWERS LIMITED, YALE CRESCENT, ST. CATHARINES (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"WE FIND THAT W. MURDZA AND R. J. HAYNES EXERCISE MANAGERIAL FUNCTIONS AND ARE THEREFORE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

7907-63-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) V. JOSEPH McNICHOLS ET AL (RESPONDENTS). WITHDRAWN).

7229-63-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. M.N. BAIN ET AL (RESPONDENTS). DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 36)

8055-63-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (HEREIN CALLED THE "TRADE UNION"; FRED TOMLINSON; ARTHUR LEVESQUE; EDWARD GRANT; JOHN C. HOWARD; ALFRED EMLEY; RONALD PARADIS; JAMES LA POINTE; JOSEPH MCLEOD (HEREIN COLLECTIVELY CALLED THE "EMPLOYEES") (APPLICANT) V. CORCORAN FOODS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:



"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR OFFENCES UNDER THE LABOUR RELATIONS ACT.

THE APPLICANTS' REQUEST FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN OFFENCE UNDER SECTION 12 OF THE LABOUR RELATIONS ACT IS WITHDRAWN AT THE REQUEST OF THE APPLICANTS BY LEAVE OF THE BOARD.

HAVING REGARD TO ALL THE EVIDENCE BEFORE IT, THE BOARD IS UNABLE TO FIND ANY SUBSTANCE TO THE ALLEGATIONS OF THE APPLICANTS THAT THE RESPONDENT ACTED CONTRARY TO SECTION 50(A), 50(C), 54(2) OR 59(1) OF THE LABOUR RELATIONS ACT AND THE APPLICANTS' REQUEST FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN OFFENCE UNDER SECTIONS 50(A), 50(C), 54(2) AND 59(1) IS ACCORDINGLY DISMISSED.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION OF CORCORAN FOODS LIMITED, THE RESPONDENT IN THIS MATTER, FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID CORCORAN FOODS LIMITED DID ON OR AFTER FEBRUARY 3RD, 1964, SEEK BY INTIMIDATION AND COERCION TO COMPEL FRED TOMLINSON, ARTHUR LEVESQUE, EDWARD BRANT, JOHN C. HOWARD, ALFRED ELMSLEY, RONALD PACAND, JAMES LE POINTE AND JOSEPH MCLEOD, EIGHT OF THE APPLICANTS HEREIN TO REFRAIN FROM BECOMING OR TO CEASE TO BE MEMBERS OF A TRADE UNION CONTRARY TO THE PROVISIONS OF SECTION 52 OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING APRIL

7308-63-U: CHARLES WALKER (COMPLAINANT) V. MCANALLY FREIGHTWAYS, DIVISION OF DOMINION FREIGHTWAYS CO. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"FOR REASONS TO BE GIVEN IN WRITING,

- (1) WE FIND THAT THE CONDUCT WHICH LED TO THE EXPULSION OF CHARLES WALKER FROM MEMBERSHIP IN THE INTERVENER UNION AND WHICH RESULTED IN THE RESPONDENT EMPLOYER DISCHARGING HIM FROM HIS EMPLOYMENT UNDER THE COMPULSORY MEMBERSHIP CLAUSE IN THE COLLECTIVE AGREEMENT, WAS NOT "ACTIVITY AGAINST THE TRADE UNION" WITHIN THE PURVIEW AND MEANING OF SECTION 35 (2) OF THE LABOUR RELATIONS ACT. IN CONSEQUENCE, AND HAVING REGARD TO SECTION 35 (1), IT WAS NOT CONTRARY TO ANY OF THE PROVISIONS OF THE ACT FOR THE EMPLOYER TO DISCHARGE CHARLES WALKER BECAUSE HE WAS EXPELLED FROM MEMBERSHIP IN THE UNION. THE COMPLAINANT IS, THEREFORE, NOT ENTITLED TO INVOKE THE REMEDIAL PROVISIONS OF SECTION 65 OF THE ACT. IN THE RESULT, WHATEVER RELIEF

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HE MAY HAVE IN ANOTHER FORUM, THERE IS  
NO REMEDY AVAILABLE TO HIM UNDER THE  
LABOUR RELATIONS ACT.

THE COMPLAINT IS DISMISSED. "

7609-63-U: SANDY CIFARELLI (COMPLAINANT) V. LOCAL UNION #87 LOCAL UNION  
#163 AND THE CITY OF FORT WILLIAM (RESPONDENTS).

7727-63-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. FITTON-  
PARKER FURNITURE, LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON  
WILLIAM ROURKE WAS DISCHARGED BY THE RESPONDENT BECAUSE OF  
HIS UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50(A) AND  
SECTION 52 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY,  
THE COMPLAINANT ALLEGES THAT ROURKE WAS LAID-OFF BY THE  
RESPONDENT ON FEBRUARY 5TH, 1964 AND THAT THE RESPONDENT  
THEREAFTER REFUSED TO CONTINUE TO EMPLOY HIM,

THE EVIDENCE IS THAT ROURKE WAS EMPLOYED BY THE  
RESPONDENT AS A BAND SAW OPERATOR PRIOR TO HIS LAY-OFF  
ON FEBRUARY 5TH. FIVE OTHER EMPLOYEES WERE ALSO LAID-OFF  
ON FEBRUARY 5TH. IT IS NOT DISPUTED THAT THE LAY-OFF WAS  
MADE AS A RESULT OF A TEMPORARY CUT-BACK IN PRODUCTION. OF  
THE OTHER FIVE EMPLOYEES WHO WERE LAID-OFF ON THAT DATE, ONE  
VOLUNTARILY TERMINATED HIS EMPLOYMENT, THREE WERE RECALLED TO  
WORK ON MONDAY, FEBRUARY 10TH, AND THE REMAINING PERSON,  
LINDA BATES, WHO WAS EMPLOYED AS A HELPER ON THE BAND SAW,  
WAS RECALLED ON TUESDAY, FEBRUARY 11TH. THE RESPONDENT HAD  
BEEN AWARE OF ROURKE'S SUPPORT OF THE COMPLAINANT UNION SINCE  
NOVEMBER, 1963 AND WERE AWARE THAT HE ACTED AS SCRUTINEER FOR  
THE UNION AT A REPRESENTATION VOTE HELD AT THE PLANT ON  
FEBRUARY 6TH, 1964. ROURKE TESTIFIED THAT OTHER EMPLOYEES  
WHO WERE LAID-OFF WITH HIM WERE UNION MEMBERS. THERE IS NO  
EVIDENCE BEFORE US, HOWEVER, AS TO WHETHER THE COMPANY HAD  
KNOWLEDGE OF THEIR MEMBERSHIP.

THE EVIDENCE OF WILLIAM WALL, THE PLANT SUPERINTENDENT,  
IS THAT ON HIS INSTRUCTIONS ROURKE WAS LAID-OFF ON THE MORNING  
OF FEBRUARY 5TH. IN THE AFTERNOON OF THE SAME DAY ROURKE CAME  
TO HIM TO INQUIRE AS TO THE DURATION OF THE LAY-OFF. THE  
CONVERSATION TOOK PLACE IN THE DRAFTING ROOM IN THE PRESENCE  
OF ROURKE'S FOREMAN, JAMES HENLEY. WALL TOLD ROURKE THAT HE  
DID NOT THINK THAT THE LAY-OFF WOULD LAST A WEEK. ROURKE  
REPLIED, "IF YOU DON'T CALL ME IN FOR MONDAY MORNING, DON'T  
BOTHRER CALLING ME AT ALL." WALL ANSWERED, "ALL RIGHT BILL, IF  
THAT'S THE WAY YOU FEEL ABOUT IT WE WILL LET IT GO AT THAT."  
BOTH JAMES HENLEY AND ARTHUR CRONE, THE COST ACCOUNTANT, WHO  
WAS WORKING IN AN ADJACENT OFFICE, CORROBORATED WALL'S EVIDENCE  
AS TO THE STATEMENT MADE BY ROURKE. ROURKE DENIES MAKING THE  
STATEMENT.

ROURKE TESTIFIED THAT ON THE MORNING OF FEBRUARY 10TH  
HE HAD A CONVERSATION WITH WALL IN HIS OFFICE. NO ONE ELSE WAS

PRESENT. ROURKE'S TESTIMONY IS THAT ON BEING ASKED WHY HE HAD NOT BEEN RECALLED, WALL REPLIED THAT IT WAS BECAUSE THE COMPANY HAD HIM PINNED FOR HEAD MAN IN THE UNION. ROURKE ALSO TESTIFIED THAT WALL TOLD HIM THAT IF HE REPEATED THE STATEMENT HE (WALL) WOULD DENY HAVING SAID IT.

THE EVIDENCE OF WALL WITH RESPECT TO THEIR MEETING ON FEBRUARY 10TH IS THAT WHEN ROURKE ASKED WHY HE WAS NOT RECALLED HE (WALL) TOLD ROURKE THAT NO WORK HAD BEEN SET UP AS YET FOR THE BAND SAW. WALL WENT ON TO SAY THAT IN ANY EVENT HE WOULD NOT BE RECALLING ROURKE AND INSTRUCTED HIM TO PICK UP HIS PAY. WALL DENIES MAKING THE STATEMENT ATTRIBUTED TO HIM BY ROURKE AS TO THE REASON FOR HIS DISCHARGE. WALL'S TESTIMONY IS THAT ROURKE HAD SAID THAT THEY BOTH KNEW HE WAS BEING LET GO BECAUSE OF HIS UNION ACTIVITIES. WALL HAD REPLIED THAT HE COULD NOT HELP HOW ROURKE FELT ABOUT IT BUT THE FACT REMAINED THAT HE WAS LETTING ROURKE GO. WALL ALSO SAID TO ROURKE THAT IF HE TOLD PEOPLE THAT WALL HAD LET HIM GO BECAUSE OF HIS UNION ACTIVITIES AND TRIED TO CREATE TROUBLE FOR THE COMPANY BECAUSE OF HIS FEELING HE (WALL) WOULD DENY THAT HE HAD LAID ROURKE OFF FOR THAT REASON.

THERE IS A COMPLETE CONFLICT IN THE TESTIMONY OF ROURKE AND WALL WITH RESPECT TO THE RELEVANT PORTIONS OF THEIR CONVERSATIONS ON FEBRUARY 5TH AND 10TH. HAVING REGARD TO ALL THEIR EVIDENCE AND THEIR DEMEANOUR AS WITNESSES, HOWEVER, WE ACCEPT THE EVIDENCE OF WALL IN PREFERENCE TO THAT OF ROURKE AS TO THE CONTENT OF THE TWO CONVERSATIONS. WALL STATED THAT HIS DECISION NOT TO RECALL ROURKE WAS PRIMARILY MOTIVATED BY ROURKE'S "ULTIMATUM" TO RECALL HIM BY MONDAY OR NOT AT ALL. WALL TESTIFIED THAT IN MAKING HIS DECISION HE ALSO HAD TAKEN INTO ACCOUNT BOTH THE FACT THAT HE WAS NOT SATISFIED WITH THE QUALITY OF ROURKE'S WORK AND ROURKE'S LONG RECORD OF GARNISHEES. (ROURKE ADMITTED THAT ON TWO OCCASIONS IN THE FALL OF 1963 HE HAD MADE MISTAKES IN HIS WORK OF SOME CONSEQUENCE WHICH RESULTED IN HIS BEING REPRIMANDED BY HIS FOREMAN JAMES KENLEY. ON THE SECOND OCCASION, ROURKE WAS INFORMED THAT ANY FURTHER MISTAKES WOULD RESULT IN HIS SUSPENSION. ROURKE ALSO STATED IN CROSS-EXAMINATION THAT HE HAD HAD HIS WAGES GARNISHEED APPROXIMATELY 45 TIMES IN THE PAST THREE YEARS AND THAT THE COMPANY HAD INFORMED HIM BY LETTER DATED DECEMBER 4TH, 1963 THAT ANY FURTHER GARNISHEES WOULD RESULT IN HIS DISMISSAL).

ON THE EVIDENCE BEFORE US WE FIND THAT AT THE TIME OF ROURKE'S LAY-OFF ON FEBRUARY 5TH, WALL DID INTEND TO RECALL HIM WHEN THE PLANT RETURNED TO NORMAL PRODUCTION. WALL, HOWEVER, BECAME PIQUED BY ROURKE'S STATEMENT THAT IF HE DID NOT CALL HIM BACK BY MONDAY NOT TO BOTHER CALLING HIM BACK AT ALL. THIS STATEMENT IN COMBINATION WITH THE FACT THAT WALL DID NOT CONSIDER ROURKE TO BE A SATISFACTORY EMPLOYEE IN ANY EVENT PROMPTED HIM TO DECIDE NOT TO RECALL ROURKE EVEN WHEN WORK BECAME AVAILABLE FOR THE BAND SAW. (WE WOULD MENTION THAT WE ARE NOT CALLED UPON TO PASS JUDGEMENT ON THE EQUITABLENESS OF WALL'S ACTION).

WE DO NOT ACCEPT THE ARGUMENT OF COUNSEL FOR THE COMPLAINANT THAT THE RESPONDENT, KNOWING OF ROURKE'S UNION ACTIVITY SINCE

NOVEMBER, 1963, WAITED UNTIL FEBRUARY AND UTILIZED THE LAY-OFF IN THAT MONTH TO DISMISS HIM FOR THESE ACTIVITIES. NEITHER DO WE ACCEPT THE ARGUMENT THAT HIS APPEARANCE AS SCRUTINEER FOR THE UNION ON FEBRUARY 6TH PROVOKED HIS DISMISSAL. IN OUR OPINION, IF THE RESPONDENT WAS IN FACT LOOKING FOR AN OPPORTUNITY TO DISCHARGE HIM FOR HIS UNION ACTIVITIES IT HAD EARLIER OPPORTUNITIES ARISING OUT OF THE GARNISHEES. IN ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE NOT SATISFIED THAT WALL'S REFUSAL TO RECALL ROURKE WAS MOTIVATED BY THE LATTER'S UNION ACTIVITIES.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED."

BOARD MEMBER D. M. STOREY DISSENTED AND SAID:

"I DISSENT.

THE EVIDENCE IS CLEAR THAT BOTH TOP MANAGEMENT AND THE SUPERINTENDENT WERE AWARE OF ROURKE'S ACTIVITY ON BEHALF OF THE INTERNATIONAL WOODWORKERS OF AMERICA. IN FACT THEY QUIZZED HIM AT SOME LENGTH ON THIS MATTER, AND APPROACHED HIM TO SEE IF HE COULD TALK OTHER EMPLOYEES OUT OF JOINING THE I.W.A., AND START AN EMPLOYEES' ASSOCIATION. THE FACT THAT ROURKE HAD PRODUCED SOME FAULTY WORK IN THE PAST, AND THE FACT THAT HE HAD A NUMBER OF GARNISHEES, DOES NOT IN THE OPINION OF THIS BOARD MEMBER ENTER INTO WHY HE WAS DISCHARGED, INASMUCH AS THE COMPANY HAD DECIDED TO TAKE NO FURTHER ACTION ON EITHER OF THESE MATTERS. THIS BEING THE SITUATION THEY CANNOT NOW BE USED AS REASONS FOR THE EMPLOYEE'S DISCHARGE.

THE ONLY REMAINING MATTER FOR CONSIDERATION IS WHETHER THE EVIDENCE OF ROURKE REGARDING HIS STATEMENTS TO WALL ON FEBRUARY 5TH, OR WALL'S VERSION OF THE INCIDENT IS TO BE ACCEPTED. IF WALL'S EVIDENCE IS TO BE ACCEPTED, THEN I WOULD FIND THAT THE COMPLAINANT HAD VOLUNTARILY TERMINATED HIS SERVICE BY HIS OWN ACTION. HOWEVER, FOR THE FOLLOWING REASONS, I AM PREPARED TO ACC ROURKE'S EVIDENCE ON THIS POINT AS BEING CREDIBLE.

WALL TESTIFIED THAT WHEN ROURKE APPROACHED HIM ON FEBRUARY 10TH AND ENQUIRED AS TO WHY HE HAD NOT BEEN RECALLED HE REPLIED THERE WAS NO WORK ON THE BANDSAW AS YET. THE QUESTION MUST BE "WHY DID WALL SAY THERE WAS NO WORK ON THE BANDSAW WHEN HE HAD DETERMINED, ACCORDING TO HIS EVIDENCE THAT HE WAS NOT GOING TO RECALL ROURKE? IT IS LOGICAL TO ASSUME THAT HAD THIS BEEN THE SITUATION, WALL WOULD HAVE MADE NO REFERENCE TO THE WORK ON THE BANDSAW, BUT SIMPLY ADVISED ROURKE THAT HIS SERVICES WERE TERMINATED.

IN ADDITION I NOTED THAT WALL, THE FOREMAN HENLEY, AND ARTHUR CRONE THE ACCOUNTANT, IN THEIR ACCOUNT OF THE ALLEGED CONVERSATION CONCERNING THE RECALL OF ROURKE, USED EXACTLY THE SAME WORDS. FURTHERMORE CRONE TESTIFIED THAT HIS OFFICE WAS ACROSS THE HALL, HE WAS WORKING ON HIS BOOKS, PAYING NO ATTENTION TO WHAT WAS GOING ON UNTIL HE HEARD LOUD VOICES, YET WAS ABLE TO RECITE FROM THE VERY FIRST WORD THE EXACT CONVERSATION. IN MY OPINION THIS IS NOT POSSIBLE.



FOR THE ABOVE REASONS I WOULD FIND THAT ROURKE DID NOT TERMINATE HIS SERVICES VOLUNTARILY, THAT THERE WAS NO REASON FOR DISCHARGING HIM, AND THEREFORE THE COMPANY KNOWING OF HIS ACTIVE SUPPORT FOR THE INTERNATIONAL WOODWORKERS OF AMERICA, DISCHARGED HIM ON ACCOUNT OF HIS UNION ACTIVITIES CONTRARY TO THE ONTARIO LABOUR RELATIONS ACT. I WOULD HAVE DIRECTED THAT HE BE REINSTATED WITH COMPENSATION FOR ALL TIME LOST."

-63-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC  
PLAINTANT) V. PEERLESS CARBON & RIBBON Co. LTD. (RESPONDENT).

BOARD ENDORSED THE RECORD AS FOLLOWS:

"WE ARE COMPELLED ON THE EVIDENCE BEFORE US TO FIND THAT THE AGGRIEVED EMPLOYEES IN QUESTION WERE DISCHARGED FROM THEIR EMPLOYMENT FOR CAUSE. NO EVIDENCE WAS PRESENTED WHICH WOULD WARRANT ANY CONCLUSION ON OUR PART THAT THE RESPONDENT REFUSED TO RE-EMPLOY THEM BECAUSE OF THEIR UNION AFFILIATIONS. IN THE RESULT, THE COMPLAINT IS DISMISSED."

-63-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC  
PLAINTANT) V. MAYFAIR HOTEL (KITCHENER) LIMITED (RESPONDENT)

BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON JOHN MCNEIL HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48 AND SECTION 50(A) OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT ON SATURDAY, FEBRUARY 8TH, 1964 HARRY GREENBERG, THE MANAGER OF THE RESPONDENT HOTEL DISCHARGED JOHN MCNEIL BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION. THE RESPONDENT DENIES THE COMPLAINANT'S ALLEGATION AND ALLEGES THAT MCNEIL WAS DISCHARGED BECAUSE HE WAS DRINKING ON THE JOB AND AFTER WORKING HOURS ON THE PREMISES CONTRARY TO THE INSTRUCTIONS OF MANAGEMENT.

MCNEIL TESTIFIED THAT HE WAS THE PRIME INSTIGATOR IN ORGANIZING THE HOTEL AND THAT HE SIGNED UP 26 OF THE 35 EMPLOYEES IN THE COMPLAINANT UNION. HE SIGNED UP ONE FEMALE EMPLOYEE IN THE PRESENCE OF FRANK JOLLIFFE, WHO IS A PERMANENT RESIDENT IN THE HOTEL. MCNEIL SUBSEQUENTLY ACCUSED JOLLIFFE OF INFORMING GREENBERG OF HIS (MCNEIL'S) ORGANIZING ACTIVITIES. JOLLIFFE IN HIS TESTIMONY DENIED THAT HE HAD INFORMED GREENBERG OF MCNEIL'S UNION ACTIVITIES. MCNEIL FURTHER STATED THAT HE SAW AN ENVELOPE BEARING THE NAME OF THE BOARD ADDRESSED TO THE MANAGEMENT OF THE HOTEL ON THE MORNING OF FEBRUARY 6TH. FROM THAT TIME UNTIL HIS DISCHARGE HE DETECTED A NOTICEABLE COOLNESS IN GREENBERG'S ATTITUDE TOWARDS HIM. GREENBERG DENIED HAVING ANY KNOWLEDGE OF MCNEIL'S UNION ACTIVITIES PRIOR TO HIS DISCHARGE ON FEBRUARY 8TH.

MCNEIL TESTIFIED THAT HE HAD A GOOD RELATIONSHIP WITH GREENBERG SINCE HE TOOK OVER THE MANAGEMENT OF THE HOTEL AND THAT GREENBERG HAD MADE NO CRITICISM OF HIS WORK.

THE EVIDENCE OF GREENBERG IS THAT WITHIN A COUPLE OF DAYS OF TAKING OVER MANAGEMENT OF THE HOTEL ON JANUARY 1ST, HE INFORMED THE EMPLOYEES INDIVIDUALLY THAT THERE WAS TO BE NO DRINKING ON THE PREMISES AFTER WORKING HOURS. AT A MEETING OF THE EMPLOYEES IN MID-JANUARY HE REITERATED HIS INSTRUCTIONS. LOU MITTELER, THE TAPMAN IN THE LADIES' LOUNGE, CONFIRMED GREENBERG'S EVIDENCE WITH RESPECT TO THE MEETING. ON JANUARY 24TH, HOWEVER, HE FOUND MCNEIL AND FOUR OR FIVE OTHER PERSONS, INCLUDING LOU MITTELER, DRINKING BEER IN THE DINING LOUNGE AT 2:00 A.M. ALSO ON FEBRUARY 1ST AND 7TH HE FOUND MCNEIL IN THE DINING LOUNGE AFTER WORKING HOURS AT APPROXIMATELY 1:45 A.M. HAVING A DRINK. IT IS NOT CLEAR FROM THE EVIDENCE WHETHER MCNEIL WAS REFERRING TO THE SAME OCCASIONS, BUT IN ANY EVENT HIS EVIDENCE IS THAT ON ALL OCCASIONS WHEN GREENBERG FOUND HIM IN THE LOUNGE HE WAS CLEANING UP PRIOR TO CLOSING THE LOUNGE.

THE EVIDENCE OF FENKELL IS THAT ON THE EVENING OF JANUARY 3RD HE HAD OBSERVED MCNEIL DRINKING A BEER IN THE LOUNGE AT ABOUT 10:00 P.M. DURING WORKING HOURS. AT THE END OF THE EVENING MCNEIL WAS CALLED TO GREENBERG'S OFFICE AT WHICH TIME FENKELL REPRIMANDED HIM FOR HIS BREACH OF THE REGULATIONS. ALTHOUGH HIS EVIDENCE IS NOT ENTIRELY CLEAR IT APPEARS THAT SOME TIME LATE IN JANUARY, AS A RESULT OF A REPORT MADE TO HIM BY GREENBERG, HE INSTRUCTED GREENBERG TO DISCHARGE MCNEIL. ON FEBRUARY 1ST, FENKELL TESTIFIED THAT WHEN HE PICKED UP THE CASH AT THE END OF THE EVENING HE COULD SMELL LIQUOR ON MCNEIL'S BREATH. HE THEREUPON DIRECTED GREENBERG TO FOLLOW THROUGH ON HIS PREVIOUS INSTRUCTIONS.

IT APPEARS FROM THE EVIDENCE OF MCNEIL AND LOU MITTELER THAT IT WAS COMMON PRACTICE FOR EMPLOYEES TO HAVE A DRINK ON THE PREMISES AFTER WORKING HOURS BUT THAT THE NEW MANAGEMENT HAD ISSUED INSTRUCTIONS TO HALT THIS PRACTICE. ACCORDING TO MITTELER, EMPLOYEES NO LONGER DRINK AFTER HOURS ON THE PREMISES. GREENBERG STATED THAT HE HAD NOT DISCHARGED MITTELER AS A RESULT OF FINDING HIM DRINKING IN THE DINING LOUNGE ON JANUARY 24TH BECAUSE HE WAS NOT ON DUTY THAT DAY AND WAS NOT IN CHARGE OF THE DINING LOUNGE. HE DID, HOWEVER, REPRIMAND MITTELER THE FOLLOWING DAY.

THE BOARD HAS CAREFULLY CONSIDERED THE EVIDENCE OF ALL THE WITNESSES CALLED BY THE PARTIES. WHILE THERE IS A CONFLICT OF TESTIMONY AS TO MCNEIL'S WORK HABITS, WE FIND THAT MCNEIL WAS WARNED ABOUT DRINKING ON THE PREMISES AND THAT HE CONTINUED TO DO SO CONTRARY TO THE INSTRUCTIONS OF MANAGEMENT. MOREOVER ON THE EVIDENCE BEFORE US, WE ARE NOT ABLE TO FIND THAT MANAGEMENT HAD KNOWLEDGE OF MCNEIL'S UNION ACTIVITIES PRIOR TO THE DATE OF HIS DISCHARGE. HAVING REGARD TO ALL THE EVIDENCE AND CIRCUMSTANCES OF THIS CASE, WE ARE NOT SATISFIED THAT JOHN MCNEIL WAS DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SECTION 48 OR 50(a) OF THE LABOUR RELATIONS ACT.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:

"I DISSENT.

I DO NOT ACCEPT THE REASON GIVEN BY THE MANAGEMENT OF THE HOTEL FOR THE DISCHARGE OF JOHN McNEIL, NAMELY THAT HE DRANK ON THE PREMISES CONTRARY TO INSTRUCTIONS. HAVING REGARD TO ALL THE EVIDENCE, I FIND THAT HE WAS IN FACT DISCHARGED BECAUSE OF HIS LEADING ROLE IN ORGANIZING THE EMPLOYEES OF THE HOTEL IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT. I WOULD HAVE DIRECTED THAT McNEIL BE REINSTATED AND COMPENSATED FOR LOST WAGES SINCE HIS DISCHARGE ON FEBRUARY 8TH."

7765-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. RALPH MILROD METAL PRODUCTS LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE COMPLAINANT HAS COMPLAINED THAT JOSEPH NORMAN WELSH WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT THE RESPONDENT BE DIRECTED TO REINSTATE MR. WELSH IN HIS EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF WAGES.

FOR REASONS TO BE GIVEN IN WRITING, WE FIND THAT MR. WELSH WAS NOT DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE ACT.

THE COMPLAINT IS THEREFORE DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:

"I DISSENT.

FOR REASONS TO BE GIVEN IN WRITING, I FIND THAT MR. WELSH WAS DISCHARGED CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT AND I WOULD HAVE REINSTATED MR. WELSH IN HIS EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF WAGES."

7905-63-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, AFFILIATED WITH A.F. OF L. C.I.O. AND C.L.C. (COMPLAINANT) V. THE BRUCE MACDONALD MOTOR HOTEL (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"HAVING REGARD TO THE MINUTES OF SETTLEMENT DATED APRIL 9TH, 1964 SIGNED BY COUNSEL FOR THE COMPLAINANT AND COUNSEL FOR THE RESPONDENT, WHICH WERE FILED WITH THE BOARD, THIS COMPLAINT IS TERMINATED."

7940-63-U: SUDBURY GENERAL WORKERS UNION, LOCAL 101 OF THE CANADIAN LABOUR CONGRESS (COMPLAINANT) V. RUDOLPHS FINE MEATS PRODUCTS (RESPONDENT).

8091-63-U: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. WOLVERINE TUBE, DIVISION OF CALUMET AND HECLA OF CANADA LTD. (RESPONDENT).

8100-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL WIRE & CABLE COMPANY (RESPONDENT).

8129-63-U: CANADIAN UNION OF PUBLIC EMPLOYEES (ON BEHALF OF MR. & MRS. RAYMOND GAUDETTE AND MR. L. P. GAGNON AND MR. J. P. GAGNON) (COMPLAINANTS) V. MISERICORDIA HOSPITAL (HAILEYBURY). (RESPONDENT).

8145-63-U: JOSEPH EDWARD SMITH (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, DISTRICT COUNCIL OFFICE (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 45 )

8160-63-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268 (COMPLAINANT) V. LAKEHEAD TELEPHONE ANSWERING SERVICE (RESPONDENT).

8180-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. HAUSERMAN LTD. (RESPONDENT).

8188-63-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. LANARK MANUFACTURING LIMITED (RESPONDENT).

8189-63-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 (COMPLAINANT) V. JAMES CHEVROLET AND OLDSMOBILE LIMITED (RESPONDENT).

8210-63-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 880 (COMPLAINANT) V. JAMES CHEVROLET OLDSMOBILE LTD. (RESPONDENT).

8280-64-U: GENERAL TRUCK DRIVERS UNION, LOCAL 938 (COMPLAINANT) V. CHANDLER CARTAGE LTD. (RESPONDENT).

8300-64-U: LUMBER & SAWMILL WORKERS UNION, LOCAL 2793, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 607 (RESPONDENT).

#### CERTIFICATION INDEXED ENDORSEMENTS

7110-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HAYES STEEL PRODUCTS LIMITED (RESPONDENT). (GRANTED APRIL 1964)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"ON OCTOBER 28TH, 1963, TWO DAYS PRIOR TO THE TERMINAL DATE FIXED FOR THE APPLICATION, MANAGEMENT CONVENED A MEETING IN A PLANT CONFERENCE ROOM OF ALL EMPLOYEES WHO THE COMPANY CONSIDERED WOULD BE IN THE PROPOSED BARGAINING UNIT. THE NAMES OF ALL SUCH EMPLOYEES WERE WRITTEN ON A BLACKBOARD IN THE CONFERENCE ROOM WHERE THEY REMAINED DISPLAYED DURING THE MEETING. THE OPERATIONS OF THE PLANT CEASED FOR THE DURATION OF THE MEETING WHICH LASTED FOR APPROXIMATELY 15 MINUTES. ALL OR MOST OF THE EMPLOYEES WHOSE NAMES WERE ON THE BLACKBOARD ATTENDED THE MEETING. THREE REPRESENTATIVES OF MANAGEMENT ATTENDED



THE MEETING AND SAT AT THE HEAD TABLE. THESE WERE MR. MITCHELL, THE PRESIDENT OF THE COMPANY, MR. LANGFORD, THE DIRECTOR OF MANUFACTURING, AND MR. GOULD, THE PERSONNEL DIRECTOR. IT WAS OBVIOUS FROM HIS DEMEANOUR THAT MR. MITCHELL WHO SPOKE TO THE ASSEMBLED EMPLOYEES WAS IN AN INDIGNANT MOOD. AMONG OTHER THINGS, HE INDICATED THAT MANAGEMENT WAS SURPRISED AND DISPLEASED THAT THE EMPLOYEES WERE SEEKING TO BRING IN A UNION. HE PROTESTED THAT AS NEW PRESIDENT HE HAD NOT BEEN GIVEN A CHANCE BY THE EMPLOYEES TO SHOW WHAT HE COULD DO FOR THEM. THE SUBSTANCE OF HIS REMARKS WAS THAT THE COMPANY DID NOT WANT A UNION IN THE OFFICE AND THAT THE EMPLOYEES SHOULD, IN THEIR OWN INTERESTS, RECONSIDER THEIR WISH TO BE REPRESENTED BY A UNION. HE MADE IT PLAIN TO THEM THAT ANY ACTION ON THEIR PART TO GET RID OF THE UNION HAD TO BE TAKEN BEFORE THE TERMINAL DATE OR IT WOULD BE TOO LATE.

IT WAS IMMEDIATELY AFTER THIS MEETING THAT THE PETITIONERS BEGAN TO SEEK SUPPORT FOR A PETITION IN OPPOSITION TO THE UNION. THE EVIDENCE IS ABUNDANTLY CLEAR THAT FOR THE NEXT TWO DAYS THEY OPENLY SOLICITED SUPPORT FROM OTHER EMPLOYEES DURING WORKING HOURS IN AND ABOUT THE WORK AREAS OF OTHER EMPLOYEES AND IN OTHER PLACES ON THE RESPONDENT'S PREMISES. THEIR ACTIVITIES IN THIS REGARD OCCUPIED A CONSIDERABLE PORTION OF THEIR TIME. IN THIS RESPECT, THEY REMAINED AWAY FROM THEIR NORMAL WORK AREAS FOR EXTENDED PERIODS WHILE THEY WERE MOVING ABOUT THE PLANT AND EMPLOYERS PREMISES RECRUITING SUPPORT. IN OUR VIEW, THEIR ABSENCE FROM WORK FOR EXTENDED PERIODS TOGETHER WITH THE FREQUENCY AND MANNER OF THEIR MOVEMENTS ABOUT THE PREMISES DURING WORKING HOURS, WOULD BROADCAST AND MAKE THEIR PURPOSE CONSPICUOUS TO ALL CONCERNED. IT IS IMPROBABLE THAT THEIR OVERT ACTIVITIES TO ENLIST OPPOSITION TO THE UNION, COULD HAVE BEEN CONDUCTED IN THE MANNER AND DURING THE TIMES IN WHICH THEY WERE, WITHOUT THE KNOWLEDGE AND TACIT ASSENT OF THE COMPANY. IT IS NOT WITHOUT INTEREST TO NOTE ALSO THAT CERTAIN EMPLOYEES WHO WERE APPROACHED TO SIGN THE PETITION WERE TOLD THAT IF THEY DID NOT DO SO THEY WOULD BE TAKEN TO FAVOUR THE UNION.

COUNSEL FOR THE RESPONDENT TAKES THE POSITION THAT THE SPEECH GIVEN BY MR. MITCHELL WAS GIVEN IN ACCORDANCE WITH THE FREE-SPEECH PROVISION OF SECTION 48, AND CANNOT AFFECT THE WEIGHT TO BE GIVEN TO THE PETITION. IN THIS RESPECT HE ARGUES, THAT THE AMERICAN AUTHORITIES HAVE GIVEN EMPLOYERS GREAT LATITUDE IN WHAT THEY MAY SAY TO THEIR EMPLOYEES CONCERNING THE UNION AND THAT THIS BOARD SHOULD DO LIKEWISE. WHILE THE STATUTORY LAW AFFECTING AN EMPLOYER'S RIGHTS OF FREE SPEECH IN THE UNITED STATES IS EXPRESSED DIFFERENTLY FROM THAT AFFECTING AN EMPLOYER'S RIGHTS UNDER SECTION 48 OF THE LABOUR RELATIONS ACT, IT IS INTERESTING, SINCE COUNSEL HAS REFERRED TO AMERICAN AUTHORITIES, TO NOTE THE REMARKS OF ONE DISTINGUISHED AMERICAN JURIST, LEARNED HAND, C. J. IN THE N.L.R.B. v. THE FEDERBUSH CO. INC. (1941) 4 L.C. 60, 604 AT P. 6L, 799

THE PRIVILEGE OF "FREE SPEECH", LIKE OTHER PRIVILEGES, IS NOT ABSOLUTE; IT HAS ITS SEASONS; A DEMOCRATIC SOCIETY HAS AN ACUTE INTEREST IN ITS PROTECTION AND CANNOT INDEED LIVE WITHOUT IT; BUT IT IS AN INTEREST MEASURED BY ITS PURPOSE. THAT PURPOSE IS TO ENABLE OTHERS TO MAKE AN INFORMED JUDGMENT AS TO WHAT CONCERNS THEM, AND ENDS SO FAR AS THE UTTERANCES DO NOT CONTRIBUTE TO THE RESULT. LANGUAGE MAY SERVE TO ENLIGHTEN A HEARER, THOUGH IT ALSO BETRAYS THE SPEAKER'S FEELINGS AND DESIRES; BUT THE LIGHT IT SHEDS WILL BE IN SOME DEGREE CLOUDED, IF THE HEARER IS IN HIS POWER. ARGUMENTS BY AN EMPLOYER DIRECTED TO HIS EMPLOYEES HAVE SUCH AN AMBIVALENT CHARACTER; THEY ARE LEGITIMATE ENOUGH AS SUCH, AND PRO TANTO THE PRIVILEGE OF "FREE SPEECH" PROTECTS THEM; BUT, SO FAR AS THEY ALSO DISCLOSE HIS WISHES, AS THEY GENERALLY DO, THEY HAVE A FORCE INDEPENDENT OF PERSUASION. THE BOARD (N.L.R.B.) IS VESTED WITH THE POWER TO MEASURE THESE TWO FACTORS AGAINST EACH OTHER -- WORDS ARE NOT PEBBLES IN ALIEN JUXTAPOSITION; THEY HAVE ONLY A COMMUNAL EXISTENCE; AND NOT ONLY DOES THE MEANING OF EACH INTERPENETRATE THE OTHER, BUT ALL IN THEIR AGGREGATE TAKE THEIR PURPORT FROM THE SETTING IN WHICH THEY ARE USED, OF WHICH THE RELATION BETWEEN THE SPEAKER AND THE HEARER IS PERHAPS THE MOST IMPORTANT. WHAT TO AN OUTSIDER WILL BE NO MORE THAN THE VIGOROUS PRESENTATION OF A CONVICTION, TO AN EMPLOYEE MAY BE THE MANIFESTATION OF A DETERMINATION WHICH IT IS NOT SAFE TO THWART. THE BOARD MUST DECIDE HOW FAR THE SECOND ASPECT OBLITERATES THE FIRST. --

COUNSEL FOR THE GROUP OF EMPLOYEES ARGUES THAT UNLESS WE FIND THAT THE EMPLOYER VIOLATED SECTION 48 OF THE LABOUR RELATIONS ACT, THAT MR. MITCHELL'S SPEECH CANNOT BE CONSIDERED AS AFFECTING THE WEIGHT TO BE ATTACHED TO THE PETITION. IN OUR OPINION, IT IS NOT NECESSARY FOR US TO DETERMINE IN THIS CASE WHETHER THE EMPLOYER HAS OR HAS NOT EXCEEDED OR VIOLATED THE FREE-SPEECH PROVISION OF SECTION 48 OF THE ACT. OUR CONSIDERATION OF THE SPEECH IS ONLY FOR THE PURPOSE OF DECIDING WHETHER THE PETITION WHICH FOLLOWED IT RECORDS THE TRUE AND VOLUNTARY WISHED OF THE SIGNATORIES, (SEE E.G. THE KILLARNEY HOTEL (WINDSOR) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1962, P. 361).

THERE IS NO QUESTION BUT THAT THE SPEECH WAS A SIGNIFICANT CIRCUMSTANCE IN THE CHAIN OF EVENTS WHICH PRECEDED THE APPEARANCE AND CIRCULATION OF THE PETITION. IT IS QUITE PLAIN FROM THE CONTENTS OF THIS SPEECH AND THE TIME AND MANNER IN WHICH IT WAS GIVEN, THAT MANAGEMENT WAS SEEKING TO BRING PRESSURE TO BEAR ON THE EMPLOYEES FOR THE PURPOSE OF INDUCING THEM, BEFORE THE TERMINAL DATE, TO TAKE UP AND SUPPORT A PETITION OPPOSING THE UNION. WE ARE IMPELLED TO BELIEVE THAT THE CUMULATIVE EFFECT OF THIS SPEECH IN CONTEXT WITH THE SUBSEQUENT APPEARANCE OF THE PETITION AND THE OPEN ACTIVITIES OF THE PETITIONERS DURING WORKING HOURS WITH WHAT THE EMPLOYEES WOULD BELIEVE TO BE THE CONSENT OF MANAGEMENT, CREATED A CLIMATE WHICH PROBABLY INHIBITED EMPLOYEES IN THE FREE EXPRESSION OF

THEIR TRUE WISHES. (SEE IN THIS RESPECT THE BOARD'S REASONS IN THE PIGOTT MOTORS CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, VOL. 1, ¶16,264, ESP. AT PP. 13281-13282). IN THE RESULT, THEREFORE, WE ARE NOT SATISFIED THAT THE PETITION REFLECTS THE TRUE WISHES OF THE EMPLOYEES. ACCORDINGLY, WE CANNOT TREAT IT AS WEAKENING OR QUALIFYING THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION."

BOARD MEMBER, R. W. TEAGLE SAID:

"I AGREE WITH THE MAJORITY DECISION EXCEPT THE INFERENCES DRAWN IN PARAGRAPH TWO."

8119-63-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (APPLICANT) v. THE TORONTO DRIVING CLUB LIMITED (RESPONDENT). (GRANTED APRIL 1964).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

HAVING REGARD (1) TO THE REPRESENTATIONS OF COUNSEL FOR THE RESPONDENT TO THE EFFECT THAT THE FACTS AND LAW RESPECTING THE JURISDICTIONAL QUESTION RAISED BY THE RESPONDENT ARE THE SAME AS IN ORPENDALE LIMITED (BOARD FILE NO. 11,275-56); AND (2) TO THE FINDINGS OF THE BOARD IN THAT CASE THAT IT HAD JURISDICTION TO ENTERTAIN THE APPLICATION; THE BOARD FINDS:

- (1) THAT THE LABOUR RELATIONS ACT APPLIES TO THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION AND TO THE RESPONDENT;
- (2) THAT THE BOARD HAS JURISDICTION TO ACCEPT THE APPLICATION OF THE APPLICANT AND TO DEAL WITH IT ON ITS MERITS IN ACCORDANCE WITH THE PROVISIONS OF THE LABOUR RELATIONS ACT.

THE BOARD FURTHER FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

THE RESPONDENT SUBMITTED THAT THERE COULD BE NO APPROPRIATE BARGAINING UNIT IN THIS CASE HAVING REGARD TO VARIOUS PROVISIONS OF THE LABOUR RELATIONS ACT, TO THE FACT THAT BY VIRTUE OF THE PROVISIONS OF THE CRIMINAL CODE THE RESPONDENT COULD ONLY CONDUCT RACE MEETS FOR FOURTEEN DAYS OF THE YEAR IN WHICH THE EMPLOYEES IN ITS PARI-MUTUEL DEPARTMENT WOULD BE EMPLOYED, AND TO THE FURTHER FACT THAT AS AT THE DATE OF THE HEARING, THE FOURTEEN DAYS FOR THE CURRENT YEAR HAD EXPIRED.

HOWEVER, IT IS CLEAR THAT IN THE ORPENDALE CASE, THE BOARD MUST HAVE BEEN FACED WITH THE SAME PROBLEMS AND IN THAT CASE A REPRESENTATION VOTE WAS ORDERED BY THE BOARD AND SUBSEQUENTLY HELD, PRESUMABLY AT A TIME WHEN THE RESPONDENT COMPANY AGAIN EMPLOYED PERSONS FALLING WITHIN THE BARGAINING UNIT. THIS WOULD APPEAR TO BE IN ACCORD WITH THE POLICY OF THE BOARD ESTABLISHED SOME YEARS AGO IN CONNECTION WITH QUESTIONS INVOLVING THE CONSTRUCTION INDUSTRY WHERE A SOMEWHAT SIMILAR SITUATION MAY EXIST AT TIMES. IN SINCLAIR CUT STONE AND CONSTRUCTION COMPANY LTD., (1950), C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-1954, PP.17,009; D.L.S. 7-2123, THE BOARD SAID:

"...THE QUESTION WHETHER CERTIFICATION WILL, IN A PARTICULAR CASE, BE OF BENEFIT TO THE EMPLOYEES AFFECTED OR WILL POSE DIFFICULT PROBLEMS FOR THE PARTIES CONCERNED IS NOT ONE FOR CONSIDERATION BY THE BOARD. AN APPLICANT WHICH MEETS THE NECESSARY REQUIREMENTS IS ENTITLED TO CERTIFICATION FOR WHAT IT IS WORTH. IT IS NOT THE FUNCTION OF THE BOARD TO ENDEAVOUR TO ESTIMATE THE PROBABLE FUTURE VALUE OF CERTIFICATION."

WE ARE UNABLE, THEREFORE, TO AGREE WITH THE SUBMISSIONS OF THE RESPONDENT THAT THERE IS NO APPROPRIATE BARGAINING UNIT IN THIS CASE.

THE BOARD NOTES THAT THE PARTIES ARE IN AGREEMENT WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT SAVE AS TO THE AREA. AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES ON THIS LATTER POINT, WE HAVE COME TO THE CONCLUSION THAT IN THE CIRCUMSTANCES OF THIS CASE IT WOULD NOT BE APPROPRIATE TO CONFINE THE BARGAINING UNIT TO GREENWOOD RACEWAY IN THE CITY OF TORONTO. THE BOARD THEREFORE FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-MUTUEL DEPARTMENT SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS, ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS, PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

FOR THE PURPOSE OF MAKING THE COUNT IN THIS CASE THE BOARD, IN ACCORDANCE WITH ITS USUAL POLICY, INCLUDED ALL PERSONS WORKING ON THE DATE OF THE MAKING OF THE APPLICATION AND THOSE PERSONS WHO ALTHOUGH NOT WORKING ON THAT DATE WORKED (AT SOME TIME DURING THE FOURTEEN-DAY PERIOD) BOTH BEFORE AND AFTER THE DATE IN QUESTION. THE BOARD DID NOT INCLUDE (FOR PURPOSES OF THE COUNT) PERSONS NOT AT WORK ON THE DATE OF MAKING OF THE APPLICATION OR PRIOR THERETO BUT WHO WORKED SUBSEQUENT TO THAT DATE."

8159-63-R: SPORTSWEAR LOCAL 199, INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) v. SUMMIT FOOTWEAR (RESPONDENT).  
(DISMISSED APRIL 1964).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE RESPONDENT COMPANY CARRIES ON THE BUSINESS OF MANUFACTURING SPORTSWEAR CLOTHING IN METROPOLITAN TORONTO. ITS MANUFACTURING OPERATIONS ARE CARRIED ON AT TWO SEPARATE LOCATIONS, ONE AT 442 ADELAIDE STREET AND THE OTHER AT 74 OSSINGTON AVENUE. THE ADMINISTRATIVE OFFICES OF THE COMPANY ARE LOCATED AT 438 ADELAIDE STREET. THERE IS A COMMON MANAGEMENT WHICH ADMINISTERS THE COMPANY'S OPERATIONS AT BOTH



SHOPS AND THE FOREMEN AT EACH SHOP REPORTS TO THE SAME GENERAL MANAGER. THE EMPLOYEES AT BOTH LOCATIONS PERFORM IDENTICAL JOB FUNCTIONS AND THE WORK COMES FROM THE SAME CONTRACT SOURCES. UNIFORM WAGES AND WORKING CONDITIONS PREVAIL AT BOTH SHOPS. THERE IS SOME INTERCHANGE OF PERSONNEL I.E. CUTTERS, BETWEEN THE TWO LOCATIONS. THERE IS ALSO AN INTERCHANGE OF MATERIALS BETWEEN THE SHOPS DURING THE MANUFACTURING PROCESS. THAT IS TO SAY, MATERIALS CUT IN ONE SHOP, ON OCCASION, ARE ASSEMBLED IN THE OTHER SHOP.

HAVING REGARD TO THE COMMUNITY OF INTERESTS BETWEEN THE EMPLOYEES OF THE RESPONDENT AT THE TWO LOCATIONS, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOPS IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING."

8246-64-R; EMPLOYEES COUNCIL OF LIVE SAVERS, LTD. HAMILTON  
(APPLICANT) V. LIFE SAVERS LIMITED (RESPONDENT). (DISMISSED APRIL 1964)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"CERTAIN EMPLOYEES OF THE RESPONDENT HAVE ATTEMPTED TO FORM A TRADE UNION AND TO THIS END HELD AN INITIAL MEETING OF EMPLOYEES ON COMPANY PREMISES WITH THE CONSENT OF THE RESPONDENT. IT DOES NOT APPEAR, HOWEVER, THAT THE RESPONDENT WAS AWARE OF THE PURPOSE OF THIS MEETING. SUBSEQUENTLY AFTER RETAINING THE SERVICES OF A SOLICITOR, THE EMPLOYEES HELD A FURTHER MEETING AT A PUBLIC HALL RENTED FOR THAT PURPOSE. AT THE SUBSEQUENT MEETING A PROPOSED CONSTITUTION WHICH HAD BEEN DRAFTED BY SOME OF THE EMPLOYEES WAS DISCUSSED IN DETAIL. HOWEVER, THE CONSTITUTION WAS NOT FORMALLY ADOPTED BY THE EMPLOYEES WHO WERE IN ATTENDANCE AT THIS MEETING.

NO OFFICERS OF THE APPLICANT WERE EVER ELECTED, HOWEVER, THE INCUMBENT OFFICERS OF "THE EMPLOYEES REPRESENTATIVE COMMITTEE" APPEAR TO HAVE CONTINUED AS IF THEY HAD BEEN ELECTED AS OFFICERS OF THE APPLICANT.

THE CONSTITUTION OF THE APPLICANT WHICH WAS FILED WITH THE BOARD HAS NOT BEEN SIGNED BY ANY OFFICERS OF THE APPLICANT.

THE APPLICANT'S WITNESS TESTIFIED THAT NO ELECTION OF OFFICERS WAS CONTEMPLATED UNTIL AFTER THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT BY THE BOARD.

WHILE IT WOULD APPEAR THAT THE EMPLOYEES OF THE RESPONDENT HAVE TAKEN CERTAIN STEPS TOWARDS FORMING AN ASSOCIATION WHICH THEY HOPE WOULD BE RECOGNIZED BY THIS BOARD AS A TRADE UNION, THE BOARD FINDS THAT THE EMPLOYEES FAILED TO TAKE ALL THE STEPS NECESSARY TO FORMALLY CONSTITUTE THE APPLICANT AS A TRADE UNION AND HAVE BEEN ILL ADVISED TO WAIT UNTIL AFTER A DECISION IN THIS MATTER BEFORE COMPLETING ALL THE STEPS NECESSARY TO FORM A TRADE UNION.

THE BOARD THEREFORE FINDS THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

SINCE THE BOARD CAN ONLY CERTIFY A TRADE UNION AS A BARGAINING AGENT AND SINCE ALL THE STEPS HAVE NOT BEEN TAKEN TO CONSTITUTE THE APPLICANT AS A TRADE UNION, THE APPLICATION IS THEREFORE DISMISSED."

SUCCESSOR STATUS INDEXED ENDORSEMENT

7167-63-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) v. WONDER BAKERIES LIMITED (HAMILTON) (RESPONDENT) v. RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461 (PREDECESSOR).  
(DISMISSED APRIL 1964)

ON MARCH 3, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:

APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

ON APRIL 7, 1953, THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, THE PARENT BODY OF LOCAL 461, THE INTERVENER IN THESE PROCEEDINGS, FILED AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF WONDER BAKERIES LIMITED. THE APPLICATION WAS ACCOMPANIED BY A LETTER FROM MR. J. PIPER, AT THAT TIME THE INTERNATIONAL REPRESENTATIVE OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, WHICH REQUESTED THAT COPIES OF ALL CORRESPONDENCE PERTAINING TO THE CASE BE SENT TO THE SECRETARY-TREASURER OF "LOCAL 422". ON APRIL 27, 1953, THE BOARD CERTIFIED THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF WONDER BAKERIES LIMITED COMPRISING ALL EMPLOYEES OF THE SALES DELIVERY STAFF OF WONDER BAKERIES LIMITED EMPLOYED IN OR OUT OF HAMILTON SAVE AND EXCEPT OFFICE STAFF, ROUTE SUPERVISORS, FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN.

ON JULY 9, 1956, THE APPLICANT HEREIN, GENERAL TRUCK DRIVERS, LOCAL UNION 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF MAMMY'S BREAD LIMITED. NOTICE OF THIS APPLICATION WAS DULY SENT BY THE REGISTRAR TO "UNITED DAIRY AND BAKERY WORKERS LOCAL #422", AND A COPY OF THE NOTICE WAS SENT TO THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, TO THE ATTENTION OF MR. J. PIPER. NO INTERVENTION WAS FILED BY EITHER OF THESE TWO UNIONS NOR DID THEY APPEAR AT THE HEARING ON THE APPLICATION. IN ITS REPLY TO THE APPLICATION, THE RESPONDENT COMPANY STATED THAT THE CORRECT NAME OF THE RESPONDENT WAS "MAMMY'S BREAD". ON JULY 30, 1956, FOLLOWING A HEARING, THE BOARD AMENDED THE NAME OF THE RESPONDENT IN THE STYLE OF CAUSE TO CONFORM TO THE CORRECT NAME AS GIVEN IN THE REPLY AND CERTIFIED GENERAL TRUCK DRIVERS, LOCAL UNION 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AS BARGAINING AGENT FOR ALL DRIVER-SALESMEN, SPECIAL DELIVERY DRIVERS AND GARAGE EMPLOYEES AT THE HAMILTON DEPOT OF MAMMY'S BREAD SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIODS.

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FOLLOWING THE CERTIFICATION, AN AGREEMENT WAS ENTERED INTO BETWEEN WONDER BAKERIES LIMITED AND LOCAL 461 OF RETAIL, WHOLESALE AND DEPARTMENT STORE UNION. NEW AGREEMENTS WERE NEGOTIATED PERIODICALLY, THE LATEST AGREEMENT BEING DATED JANUARY 3, 1963, TO CONTINUE IN EFFECT UNTIL JANUARY 1, 1966. THE RECOGNITION CLAUSE IN THIS AGREEMENT COVERS "ALL EMPLOYEES OF THE SALES DELIVERY STAFF OF ITS HAMILTON PLANT SAVE AND EXCEPT OFFICE STAFF, FOREMEN, ROUTE SUPERVISORS AND THOSE ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR."

GENERAL TRUCK DRIVERS UNION, LOCAL 879 ENTERED INTO AGREEMENTS, FOLLOWING CERTIFICATION, WITH AN EMPLOYER ENTITY DESCRIBED IN THE AGREEMENTS AS "MAMMY'S BREAD (HAMILTON), A DIVISION OF WONDER BAKERIES LIMITED", COMMENCING IN 1957 AND RENEWED PERIODICALLY SINCE THEN. THE LATEST AGREEMENT WAS SIGNED ON DECEMBER 15, 1962 AND THE RECOGNITION CLAUSE OF THIS AGREEMENT COVERS "ALL DRIVER-SALESMEN, SPECIAL DELIVERY DRIVERS, TRANSPORT DRIVERS AND GARAGE EMPLOYEES IN THE HAMILTON DEPOT OF THE COMPANY (A TERM DEFINED IN THE AGREEMENT AS 'MAMMY'S BREAD (HAMILTON) A DIVISION OF WONDER BAKERIES LIMITED') SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SUMMER PERIOD".

IN 1953, WHEN THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION WAS CERTIFIED, WONDER BAKERIES LIMITED CARRIED ON BOTH A BAKERY AND A SALES DIVISION AT KING STREET EAST IN HAMILTON. SOMETIME IN 1956, WONDER BAKERIES LIMITED ACQUIRED THE ASSETS OF MAMMY'S BREAD LIMITED AND COMMENCED TO CARRY ON BOTH A BAKERY AND SALES OPERATION ON SANFORD AVENUE NORTH IN HAMILTON UNDER THE NAME "MAMMY'S BREAD". THE NAME "MAMMY'S BREAD LIMITED" WAS NEVER USED IN CONNECTION WITH THE OPERATION AND IN FACT THE EMPLOYER AT THE SANFORD AVENUE OPERATION WAS DESCRIBED IN THE SEVERAL COLLECTIVE AGREEMENTS THAT WERE NEGOTIATED WITH RESPECT TO THE EMPLOYEES OF THAT OPERATION AS "MAMMY'S BREAD (HAMILTON) A DIVISION OF WONDER BAKERIES LIMITED".

COUNSEL FOR THE INTERVENER SUBMITS THAT THE CERTIFICATE ISSUED TO THE APPLICANT ON JULY 30, 1956, IS A NULLITY. IN OUR OPINION, THE INTERVENER CANNOT AT THIS TIME, AFTER THE LAPSE OF OVER SEVEN YEARS SINCE THE CERTIFICATE WAS ISSUED AND HAVING REGARD TO THE COURSE OF DEALING BETWEEN THE PARTIES, BE ALLOWED TO TAKE SUCH A POSITION. IN ADDITION, IT SHOULD BE NOTED THAT, ALTHOUGH THE CERTIFICATE ISSUED TO THE PARENT BODY OF THE INTERVENER DESCRIBED THE BARGAINING UNIT AS COMPRISING ALL EMPLOYEES OF THE SALES DELIVERY STAFF OF WONDER BAKERIES LIMITED EMPLOYED IN AND OUT OF HAMILTON, SAVE AND EXCEPT OFFICE STAFF, ROUTE SUPERVISORS, FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN, THE AGREEMENT BETWEEN THE INTERVENER AND WONDER BAKERIES LIMITED DESCRIBED THE UNIT AS ALL EMPLOYEES OF THE SALES DELIVERY STAFF OF ITS HAMILTON PLANT SAVE AND EXCEPT OFFICE STAFF, FOREMEN, ROUTE SUPERVISORS AND THOSE ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR. IT MUST BE TAKEN FROM THE COURSE OF DEALING BETWEEN THE PARTIES OVER MANY YEARS THAT, WHATEVER THE EXTENT OF THE INTERVENER'S BARGAINING RIGHTS MAY BE, THE INTERVENER DID NOT BARGAIN FOR AND DID NOT CLAIM TO REPRESENT THE EMPLOYEES FOR WHOM GENERAL TRUCK DRIVERS UNION, LOCAL 879, INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA WAS THE BARGAINING AGENT.

IN MARCH, 1963, THE BAKING OPERATIONS WHICH UP TO THAT TIME HAD BEEN CARRIED ON AT THE KING STREET PLANT WERE TRANSFERRED TO THE SANFORD AVENUE PLANT. IN OCTOBER, THE SALES OPERATIONS AT THE KING STREET LOCATION WERE DISCONTINUED AND THE SALES EMPLOYEES WERE TRANSFERRED TO THE SANFORD AVENUE PLANT. THE WHOLE OPERATION WAS THEREAFTER CARRIED ON UNDER THE NAME OF "WONDER BAKERIES LIMITED". ON OCTOBER 18, MR. G.G. SMITH, THE DIRECTOR OF INDUSTRIAL RELATIONS OF WONDER BAKERIES LIMITED NOTIFIED THE PRESIDENT OF THE TRUCK DRIVERS UNION AS FOLLOWS:

FOR YOUR INFORMATION, PLEASE BE ADVISED THAT EFFECTIVE OCTOBER 21, THE COMPANY MAMMY'S BREAD SHALL CEASE TO EXIST. THE OPERATION IN HAMILTON ...SHALL THEN BE KNOWN AS WONDER BAKERIES LIMITED.

THIS CHANGE OF COURSE AFFECTS YOUR UNION'S CERTIFICATION AND SUBSEQUENT COLLECTIVE AGREEMENTS WITH MAMMY'S BREAD IN ... HAMILTON ...

IN HAMILTON, THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 462, IS THE CERTIFIED BARGAINING AGENT FOR ALL SALES PERSONNEL OF WONDER BAKERIES LIMITED. THEREFORE, AS ALL HAMILTON SALES PERSONNEL OF MAMMY'S SHALL BE EMPLOYEES OF WONDER BAKERIES LIMITED, IT IS OUR CONSIDERED OPINION THAT SAID SALES PERSONNEL SHALL, EFFECTIVE OCTOBER 21, 1963 FALL UNDER THE TERMS AND CONDITIONS OF THE EXISTING COLLECTIVE AGREEMENT BETWEEN WONDER BAKERIES LIMITED AND THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461.

THE GENERAL TRUCK DRIVERS LOCAL UNION 879 HAS APPLIED FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT, ALLEGING THAT MAMMY'S BREAD HAS SOLD ITS BUSINESS TO WONDER BAKERIES LIMITED AND THAT WONDER BAKERIES LIMITED HAS INTERMINGLED THE EMPLOYEES OF THE TWO BUSINESSES.

TO BE ENTITLED TO RELIEF UNDER SECTION 47A, THE APPLICANT MUST ESTABLISH THAT THE BUSINESS OF MAMMY'S BREAD WAS "SOLD" TO WONDER BAKERIES LIMITED. COUNSEL FOR THE APPLICANT CONTENDS THAT, SINCE THE TERM "BUSINESS" IS DEFINED IN THE SECTION AS INCLUDING "PART OF A BUSINESS", THE SECTION BRINGS WITHIN ITS PURVIEW THAT SORT OF TRANSACTION THAT OCCURRED HERE. WE CANNOT ACCEPT THIS CONTENTION. IN OUR OPINION, THE SECTION IS DESIGNED TO DEAL WITH A SITUATION WHERE THERE IS A SALE OF A BUSINESS BY ONE PERSON TO ANOTHER, AND NOT WITH A SITUATION WHERE THERE IS AN INTERNAL CONSOLIDATION OR RE-ALIGNMENT BY ONE EMPLOYER OF TWO OR MORE OF HIS OPERATIONS. SINCE, ON THE FACTS SET OUT ABOVE, THERE HAS BEEN NO SALE WITHIN THE MEANING OF THAT TERM AS IT IS USED IN SECTION 47A OF THE ACT, THIS APPLICATION, IN SO FAR AS IT RELATES TO THE REQUEST OF THE APPLICANT FOR RELIEF UNDER SECTION 47A OF THE ACT, IS DISMISSED.



COUNSEL FOR THE APPLICANT, IN THE WRITTEN REPRESENTATIONS HE HAS FILED WITH THE BOARD FOLLOWING THE HEARING IN THIS CASE, HAS SUBMITTED THAT, IF THE BOARD SHOULD FIND THAT THE FACTS DO NOT REVEAL A SALE OF A BUSINESS, THEN THE BOARD SHOULD DECIDE UNDER SECTION 79(1) OF THE ACT, WHAT COLLECTIVE AGREEMENT CONTINUES IN EFFECT, I.E., THAT TO WHICH THE APPLICANT IS A PARTY OR THAT TO WHICH THE INTERVENER IS A PARTY. IN HIS REPRESENTATIONS, COUNSEL FOR THE APPLICANT DOES NOT SPELL OUT WHAT THE BOARD'S JURISDICTION UNDER SECTION 79(1) TO DEAL WITH THE ISSUE HERE INVOLVED MAY BE. IN A FURTHER SUBMISSION HE HAS MADE, THE ONLY CLARIFICATION OF HIS POSITION ON THIS POINT THAT HE HAS GIVEN TO THE BOARD IS A REFERENCE TO THE STATEMENT OF McRUER, C.J.H.C. IN THE GENAIRE CASE, (1958) O.R. 637, THAT

I DO NOT THINK THE PROCEDURE BEFORE THE BOARD SHOULD BE SO FORMAL THAT IF AN APPLICANT MAKES AN APPLICATION FOR RELIEF THAT HE OUGHT NOT TO BE GRANTED THE RELIEF TO WHICH HE IS ENTITLED BECAUSE OF SOME TECHNICAL FORMALITY IN THE FRAMING OF THE APPLICATION.

IN SUBSTANCE, THE RELIEF THAT COUNSEL FOR THE APPLICANT SEEKS UNDER SECTION 79(1) OF THE ACT IS A RULING AS TO WHAT BARGAINING RIGHTS FLOW FROM THE AGREEMENTS THE RESPECTIVE PARTIES NEGOTIATED AND ENTERED INTO OVER A PERIOD OF SOME YEARS. WHETHER HIS CLIENT IS ENTITLED TO SUCH RELIEF EITHER UNDER SECTION 79(1) OR UNDER SOME OTHER PROVISION OF THE ACT IS A QUESTION OF GREAT COMPLEXITY. IN OUR OPINION, THE BOARD SHOULD NOT ATTEMPT TO RESOLVE THIS QUESTION AT THIS STAGE AND WITHOUT THE BENEFIT OF ARGUMENT FROM COUNSEL ON ALL THE ISSUES INVOLVED. COUNSEL FOR THE APPLICANT WILL THEREFORE BE GIVEN AN OPPORTUNITY TO SUBMIT WRITTEN REPRESENTATIONS AS TO THE JURISDICTION OF THE BOARD TO GRANT TO THE APPLICANT RELIEF UNDER SECTION 79(1) OR ANY OTHER PROVISION OF HIS SUBMISSIONS ON OR BEFORE MARCH 13TH, 1964. THE OTHER PARTIES WILL THEN HAVE AN EQUAL OPPORTUNITY TO FILE WRITTEN SUBMISSIONS IN REPLY.

ON APRIL 7, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HEREIN HAS NOTIFIED THE BOARD THAT IT DOES NOT DESIRE TO MAKE ANY FURTHER REPRESENTATIONS PURSUANT TO THE OPPORTUNITY GIVEN IN THE BOARD'S DECISION OF MARCH 3, 1964 IN THIS MATTER. THIS PROCEEDING IS ACCORDINGLY TERMINATED."

#### PROSECUTION INDEXED ENDORSEMENT

7229-63-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO  
(APPLICANT) v. M. N. BAIN ET AL (RESPONDENTS). (DISMISSED APRIL 1964).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT SEEKS CONSENT TO INSTITUTE A PROSECUTION AGAINST 86 EMPLOYEES WORKING AT ITS LAKEVIEW GENERATING STATION WHO IT ALLEGES ENGAGED IN A STRIKE ON TUESDAY, OCTOBER 29TH, 1963, CONTRARY TO THE PROVISIONS OF SECTION 54 (2) OF THE LABOUR RELATIONS ACT.

WHILE THE BOARD IS NOT EMPOWERED, NOR CALLED UPON, TO MAKE A DECISION ON THE MERITS OF THE CASE IT APPROACHES THE QUESTION AS TO WHETHER THE EVIDENCE IS SUFFICIENT FOR IT TO GRANT ITS CONSENT AS A JUDICIAL AND NOT AS AN ADMINISTRATIVE CONSIDERATION. APART FROM THE QUESTION AS TO WHETHER, AS A MATTER OF DISCRETION, THE BOARD WILL GRANT CONSENT UNDER SECTION 74 (SEE FOR INSTANCE THE CANAL CARTAGE LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1962, P. 251), IT GENERALLY REQUIRES, AS A CONDITION PRECEDENT TO THE GRANTING OF CONSENT, THAT THE APPLICANT ADDUCE SUFFICIENT EVIDENCE TO ESTABLISH A PRIMA FACIE CASE UPON WHICH A MAGISTRATE MIGHT FIND A VIOLATION OF THE ACT. IN SOME RESPECTS THE FUNCTION OF THE BOARD AND ITS REQUIREMENTS AS TO PROOF ARE ANALOGOUS TO THAT OF A MAGISTRATE IN A PRELIMINARY HEARING.

WHILE IN APPLICATIONS FOR CONSENT TO PROSECUTE THE WEIGHT OF RELIABLE EVIDENCE NEED NOT GO TO THE LENGTH OF PROVING THE COMMISSION OF THE OFFENCE, IT MUST, EXCEPT IN SPECIAL CIRCUMSTANCES OF WHICH THERE ARE NONE IN THE PRESENT CASE, SHOW A PRIMA FACIE CASE (ASSUMING THE VALIDITY OF AT LEAST ARGUABLE POINTS OF LAW PUT FORWARD IN SUPPORT THEREOF), THAT THE RESPONDENT (IN THE RESTRICTIVE LEGAL SENSE AND WITHOUT CONSIDERING THE PREPONDERANCE OF EVIDENCE) IS PROBABLY GUILTY OF THE OFFENCE CHARGED. (SEE THE JOHNSON - PERINI - KIEWIT CASE, BOARD FILE 1485-61-U; DOMINION STEEL & COAL CORPORATION LTD. CASE, O.L.R.B. MONTHLY REPORT, DECEMBER, 1961, P. 318; THE SEVEN-UP BOTTLING COMPANY CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, VOL. 1, PP. 16, 227; THE SUPERIOR BOX COMPANY LTD. CASE, C.C.H. IBID., PP. 16, 189; BYERS CONSTRUCTION CO. LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-59 TRANSFER BINDER, PP. 16, 088; NORFOLK GENERAL HOSPITAL CASE, BOARD FILE 12343-57; THE CANADIAN PACIFIC RAILWAY COMPANY (ROYAL YORK HOTEL) CASE, BOARD FILE 1643-61-U; THE CANADIAN INDUSTRIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1961, P. 285; WESTERN FREIGHT LINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST, 1961, P. 171).

IN DETERMINING QUESTIONS RELATING TO THE ADMISSIBILITY AND RELIABILITY OF EVIDENCE IN APPLICATIONS FOR CONSENT TO PROSECUTE, THE BOARD GENERALLY FOLLOWS THE SAME RULES OF EVIDENCE AS ARE APPLIED BY COURTS IN CRIMINAL PROCEEDINGS. FOR INSTANCE, JUST AS HEARSAY TESTIMONY IS NOT ADMISSIBLE ON A PRELIMINARY INQUIRY BY A MAGISTRATE (SEE R. V. SMITH, 77 C.C.C. 394), THE BOARD DOES NOT ADMIT SUCH TESTIMONY TO PROVE THE TRUTH OF THE MATTER STATED IN PROCEEDINGS BEFORE IT. FURTHER, OF COURSE, SINCE THE PROCEEDINGS IS OF A QUASI-CRIMINAL NATURE, THE BOARD, IN SUCH APPLICATIONS, ALSO ADOPTS THE SAME CAUTIOUS APPROACH TO THE EVIDENCE AND IS GUIDED BY THE SAME PRINCIPLES AS GOVERN A JUDGE IN A CRIMINAL CASE IN ESTIMATING THE WORTH AND RELIABILITY OF TESTIMONY. IN THIS RESPECT, FOR INSTANCE, THE BOARD CONSIDERS, AMONG OTHER THINGS, WHETHER THE EVIDENCE ADDUCED HAS BEEN BROUGHT FORWARD IN THE FORM WHICH AND BY THE PERSONS WHO, IN SO FAR AS THE CIRCUMSTANCES ADMIT, CAN BEST VOUCH FOR ITS ACCURACY AND RELIABILITY.

HOWEVER, IN OUR OPINION, EVEN IF THE BOARD COULD INFER FROM THE ADMISSIBLE EVIDENCE THAT THERE WAS A WALKOUT CONSTITUTING A STRIKE ON OCTOBER 29TH, THERE IS NO ADMISSIBLE OR RELIABLE EVIDENCE FROM WHICH IT CAN REASONABLY BE FOUND OR INFERRED THAT ANY ONE IN PARTICULAR OF THE 86 NAMED RESPONDENTS OR THAT ALL OF THEM PARTICIPATED IN THE STRIKE. IN OUR VIEW, THE MOST THAT COULD BE SAID, WOULD BE THAT CERTAIN OF THE 86 EMPLOYEES, WHOEVER THEY MIGHT BE, WERE NOT SEEN BY MR. KNOWLES TO BE IN THEIR WORK AREAS WHEN HE MADE A TOUR OF THE JOB AT 8:15 A.M. ON OCTOBER 29TH, 1963. WHILE THERE MAY BE SOME APPARENT FIRST-HAND EVIDENCE FROM WHICH, IF ACCEPTED, AN INFERENCE COULD BE DRAWN OF THE CONTEMPORANEOUS ABSENCE FROM WORK OF UNIDENTIFIED EMPLOYEES AT OR ABOUT 8:15 A.M. ON OCTOBER 29TH, THIS IS MANIFESTLY INSUFFICIENT TO WARRANT THE INFERENCE THAT ALL 86 NAMED PERSONS FAILED, AS ALLEGED, "TO WORK THEIR REGULARLY SCHEDULED SHIFT" OR THAT THEY DID SO IN COMBINATION OR CONCERT. NO EVIDENCE WAS PRESENTED BY THE APPLICANT TO INDICATE THE EXISTENCE OF A LABOUR DISPUTE NOR OF ANY DISSATISFACTION AMONG THE EMPLOYEES THAT COULD LEAD ONE TO FIND THAT THEY HAD BEEN INDUCED TO ACT TOGETHER AND HAD ALL FAILED TO REPORT FOR WORK ON OCTOBER 29TH BECAUSE THEY WERE ON STRIKE. FURTHER, THERE IS NO RELIABLE FIRST-HAND EVIDENCE THAT SOME OF THE 86 EMPLOYEES WERE NOT ALSO ABSENT ON OCTOBER 28TH OR 30TH OF THAT SOME WERE NOT ABSENT FROM WORK ON OCTOBER 29TH BECAUSE OF ILLNESS OR SOME OTHER CAUSE. A PRIMA FACIE CASE IS NOT MADE OUT AGAINST ALL MEMBERS OF A GROUP SIMPLY BECAUSE THE EVIDENCE MAY IMPLICATE SOME OR A LARGE NUMBER OF UNIDENTIFIED MEMBERS THEREOF. INDIVIDUALS CANNOT BE INCRIMINATED AT LARGE BUT ONLY INDIVIDUALLY AND PERSONALLY.

THE CASE OF THE APPLICANT ON THE EVIDENCE PLACED BEFORE US IS BASED ON EXTREMELY TENUOUS AND SPECULATIVE GROUNDS AND, IN OUR VIEW, IS GROSSLY DEFICIENT IN THE KIND AND QUALITY OF PROOF WHICH THIS BOARD HAS LONG REQUIRED AS AN ESSENTIAL PREREQUISITE TO THE GRANTING OF CONSENT. SINCE NO CASE WHATEVER WAS MADE OUT AGAINST ANY OF THE NAMED RESPONDENTS, IT WOULD BE WHOLLY IMPROPER TO DRAW ANY INFERENCE FROM THE FACT THAT THEY WERE NOT CALLED TO GIVE EVIDENCE. IN THE RESULT, WE MUST FIND THAT THE APPLICANT HAS FAILED TO PROVE A PRIMA FACIE CASE OF ALL THE INGREDIENTS OF THE OFFENCE AGAINST EACH OR ANY OF THE INDIVIDUALLY NAMED RESPONDENTS. THE APPLICATION IS, THEREFORE, DISMISSED.

BOARD MEMBER M.C. HAY DISSENTED AND SAID:

"I DISSENT.

IN MY OPINION THE EVIDENCE AND THE INFERENCE WHICH LOGICALLY AND NECESSARILY FLOW THEREFROM CLEARLY ESTABLISHES A PRIMA FACIE CASE AGAINST THE 86 NAMED RESPONDENTS WHO BEING MEMBERS OF THE SAME TRADE UNION AND EMPLOYED IN THE SAME TRADE AT THE SAME GEOGRAPHICAL LOCATION ABSENTED THEMSELVES FROM WORK DURING THE SAME DAY. I WOULD ACCORDINGLY HAVE GRANTED CONSENT TO PROSECUTE."

REQUEST FOR CLARIFICATION OF DESCRIPTION OF BARGAINING UNIT  
IN CERTIFICATION APPLICATION

6588-63-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED  
BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA,  
AFL-CIO-CLC (APPLICANT) V. DORAN'S NORTHERN ONTARIO BREWERIES LIMITED  
(RESPONDENT) V. UNION OF MINE, MILL AND SMELTER WORKERS (INTERVENER).  
(GRANTED DECEMBER 1963).

ON APRIL 20, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HAS REQUESTED THE BOARD TO CLARIFY  
THE DESCRIPTION OF THE BARGAINING UNIT DETERMINED BY THE  
BOARD TO BE APPROPRIATE IN ITS DECISION DATED AUGUST 1ST,  
1963 IN THIS MATTER. IN PARTICULAR, THE APPLICANT  
REQUESTS THE BOARD TO FIND THAT THE RETAIL STORE STAFF



OF THE RESPONDENT AT SUDBURY ARE INCLUDED IN THE BARGAINING UNIT. THE BARGAINING UNIT DETERMINED BY THE BOARD IN THIS MATTER TO BE APPROPRIATE READS AS FOLLOWS: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF". FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRIVER-SALESMEN WERE INCLUDED IN THE BARGAINING UNIT.

AT SUDBURY, THE RESPONDENT OPERATES A BREWING PLANT AND IMMEDIATELY ADJACENT TO THE OPERATING PLANT IN A SEPARATE BUILDING IS A RETAIL SALES OUTLET WHERE THE RESPONDENT'S PRODUCTS ARE SOLD. IT IS WITH RESPECT TO THE EMPLOYEES OF THIS RETAIL SALES OUTLET THAT WE ARE HERE CONCERNED. THE RETAIL STORE EMPLOYEES ARE ENGAGED IN THE SALE OF THE RESPONDENT'S PRODUCTS PART OF THEIR WORKING DAY AND ALSO DO CONSIDERABLE OFFICE WORK. THEY ARE IN NO WAY ENGAGED IN THE PRODUCTION OF THE RESPONDENT'S PRODUCTS AND THE RETAIL SALES OUTLET IN WHICH THEY WORK HAS NO DIRECT ENTRANCE TO THE BREWERY.

IN ITS APPLICATION FOR CERTIFICATION IN THIS MATTER, THE APPLICANT ASKED TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN SUDBURY, INCLUDING DRIVER-SALESMEN, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."

THE APPROPRIATE UNIT SUGGESTED BY THE RESPONDENT IN ITS REPLY READS: "ALL EMPLOYEES OF DORAN'S NORTHERN ONTARIO BREWERIES LIMITED AT ITS PLANT IN SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND SALES STAFF."

THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THE APPLICATION FOR CERTIFICATION DID NOT INCLUDE THE NAMES OF ANY RETAIL STORE STAFF ALTHOUGH AT THAT TIME FOUR PERSONS WERE EMPLOYED IN THIS CATEGORY. AT THE TIME OF THE APPLICATION FOR CERTIFICATION, THE APPLICANT DID NOT CLAIM ANY OF THE RETAIL STORE STAFF AS MEMBERS.

THE RESPONDENT DID NOT APPEAR AT THE FIRST HEARING IN THIS MATTER AND WHEN THE APPLICANT WAS ASKED WHETHER OR NOT IT HAD ANY OBJECTION TO THE EXCLUSION OF SALES STAFF AS REQUESTED BY THE RESPONDENT, THE APPLICANT INDICATED THAT IT HAD NO OBJECTION TO SUCH EXCLUSION PROVIDED THE BOARD INCLUDED IN ITS DESCRIPTION OF THE BARGAINING UNIT A CLARITY NOTE WHICH WOULD INCLUDE DRIVER-SALESMEN IN THE BARGAINING UNIT.

THE APPLICANT NOW TAKES THE POSITION THAT BECAUSE RETAIL STORE STAFF ARE NOT REGISTERED WITH THE LIQUOR CONTROL BOARD AS PROVIDED BY SECTION 92 OF THE LIQUOR CONTROL ACT THEY ARE THEREFORE NOT SALES STAFF WITHIN THE MEANING OF THE DESCRIPTION OF THE BARGAINING UNIT.

SECTION 92 OF THE LIQUOR CONTROL ACT READS AS FOLLOWS:

"NO PERSON SHALL DIRECTLY OR INDIRECTLY HOLD HIMSELF OUT OR ACT AS AN AGENT OR REPRESENTATIVE OF A DISTILLER, BREWER OR A PRODUCER OF WINE OR ONTARIO WINE UNLESS HE IS REGISTERED WITH THE BOARD AS AN AGENT OR REPRESENTATIVE OF SUCH DISTILLER, BREWER OR PRODUCER."

IT WILL BE NOTED THAT SECTION 92 OF THE LIQUOR CONTROL ACT MAKES NO REFERENCE WHATSOEVER TO "SALES STAFF OR SALESMEN". WE ARE THEREFORE OF OPINION THAT SECTION 92 OF THE LIQUOR CONTROL ACT IS OF NO ASSISTANCE WHATSOEVER IN ASSISTING THE BOARD TO DETERMINE WHETHER OR NOT THE RETAIL STORE STAFF ARE PERSONS EXCLUDED FROM THE BARGAINING UNIT IN THIS MATTER UNDER THE EXCLUDED CLASSIFICATION OF OFFICE AND SALES STAFF.

THE APPLICANT FILED WITH THE BOARD COPIES OF 7 COLLECTIVE AGREEMENTS WITH OTHER BREWERS IN ONTARIO. WHILE THERE IS A WAGE RATE FOR RETAIL STORE EMPLOYEES IN EACH OF THESE COLLECTIVE AGREEMENTS IT IS TO BE NOTED THAT THE BARGAINING UNITS DESCRIBED IN THESE COLLECTIVE AGREEMENTS DO NOT EXCLUDE SALES STAFF.

WHILE THE APPLICANT ACKNOWLEDGES THAT IT IS THE BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAULT STE. MARIE AND PORT ARTHUR, IT ADMITS THAT IT DOES NOT BARGAIN FOR THE RESPONDENT'S RETAIL STORE EMPLOYEES AT THESE LOCATIONS.

HAVING REGARD TO THE FACT THAT IT WOULD APPEAR THAT IT HAS BEEN THE PRACTICE OF THE APPLICANT NOT TO BARGAIN FOR THE RESPONDENT'S RETAIL STORE EMPLOYEES AT THE RESPONDENT'S LOCATIONS WHERE IT HOLDS BARGAINING RIGHTS, THAT THE BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE HAS BEEN RESTRICTED TO THE RESPONDENT'S PLANT, THAT THE BARGAINING UNIT EXCLUDES THE CLASSIFICATION OF OFFICE AND SALES STAFF, THE BOARD ACCORDINGLY FINDS THAT THE RETAIL STORE EMPLOYEES OF THE RESPONDENT AT SUDBURY ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF OFFICE AND SALES STAFF."

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION

7257-63-R: GARAGE EMPLOYEES LODGE No. 1120, INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. POWELL EQUIPMENT COMPANY, LIMITED (RESPONDENT). (GRANTED DECEMBER, 1963).

ON APRIL 30, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE PARTIES HEREIN AT THE HEARING, AFTER CONSIDERABLE DISCUSSION, AGREED TO THE EXCLUSION FROM THE BARGAINING UNIT OF PERSONS IN THE MAINTENANCE DEPARTMENT. AT THE HEARING, BEFORE THE PARTIES STATED TO THE BOARD THAT THEY WERE AGREED ON THIS EXCLUSION, THE RESPONDENT INFORMED THE BOARD THAT THE MAINTENANCE DEPARTMENT COMPRISED FIVE PERSONS AND THE NAMES OF RONALD PERRIER AND DONALD THOMPSON, THE PERSONS WHOSE STATUS IS IN QUESTION IN THE APPLICANT'S REQUEST, WERE SPECIFICALLY MENTIONED AS BEING

INCLUDED IN THIS GROUP. THE APPLICANT MUST THEREFORE BE TAKEN TO HAVE AGREED EXPRESSLY TO THE EXCLUSION OF THESE TWO PERSONS WHILE PERFORMING WORK IN THE OCCUPATIONAL CLASSIFICATION IN WHICH THEY WERE AT THAT TIME. HAVING REGARD TO THESE CONSIDERATIONS, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY ITS DECISION OF DECEMBER 19, 1963 IN THIS MATTER."

REQUEST TO REVOKE DECISION IN CERTIFICATION APPLICATION

7230-63-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264, TORONTO ONTARIO (APPLICANT) v. KITCHENS OF SARA LEE (CANADA) LIMITED (RESPONDENT). (GRANTED DECEMBER 1963).

ON APRIL 1, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:

"THE BOARD BY A CERTIFICATE DATED DECEMBER 19TH, 1963 CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL.

"ON JANUARY 2ND, 1964 THE RESPONDENT FILED WITH THE BOARD CHARGES RELATING TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. THE RESPONDENT ALLEGES THAT CERTAIN EMPLOYEES WERE INDUCED TO SIGN APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION AND TO PAY THE SUM OF ONE DOLLAR BY DELIBERATE MISREPRESENTATION AND BY FRAUD ON THE PART OF THE UNION AND ITS REPRESENTATIVE. MORE PARTICULARLY, THE RESPONDENT ALLEGED THAT MORRIS ZIMMERMAN, A REPRESENTATIVE OF THE APPLICANT, TOLD A NUMBER OF EMPLOYEES THAT THE COMPANY WANTED HIS UNION TO REPRESENT THE EMPLOYEES OF THE COMPANY BUT THAT THE COMPANY COULD NOT OPENLY INVITE THE UNION AS IT HAD TO BE DONE BY THE EMPLOYEES THEMSELVES. THE RESPONDENT FURTHER ALLEGES THAT CERTAIN EMPLOYEES, BELIEVING THAT THEY WERE DOING SO IN ACCORDANCE WITH A REQUEST FROM THE COMPANY, SIGNED APPLICATIONS FOR MEMBERSHIP IN THE UNION WHICH THEY WOULD NOT OTHERWISE HAVE DONE.

THE EVIDENCE OF ANNE ASHTON IS THAT SHE ATTENDED A MEETING AT THE HOME OF JOYCE RODIE ON NOVEMBER 8TH, 1964 WHICH WAS ATTENDED BY SEVEN EMPLOYEES AND MORRIS ZIMMERMAN (AN ORGANIZER FOR THE APPLICANT UNION). SHE TESTIFIED THAT ZIMMERMAN OUTLINED THE ECONOMIC ADVANTAGES TO BE GAINED BY JOINING THE UNION. HE ALSO INFORMED THEM THAT THE UNION REPRESENTED THE EMPLOYEES OF THE PARENT PLANT IN CHICAGO AND THAT A GOOD RELATIONSHIP EXISTED BETWEEN THE COMPANY AND THE UNION. HE FURTHER STATED THAT THE COMPANY WANTED THE UNION BUT IT WAS SOMETHING THAT THE COMPANY COULD NOT DO FOR ITSELF. THE EMPLOYEES WOULD HAVE TO DO IT FOR THE COMPANY. THE EVIDENCE OF ERNA PETERS, WHO WAS ALSO AT THE MEETING, IS ESSENTIALLY THE SAME. SHARON SMITH STATED THAT ZIMMERMAN CAME TO HER HOME ON THE EVENING OF NOVEMBER 12TH. SHE APPEARED TO HAVE DIFFICULTY RECOLLECTING THE CONTENT OF HER CONVERSATION WITH ZIMMERMAN BUT TESTIFIED THAT HE HAD SAID THAT THE COMPANY WANTED THE UNION BUT COULD NOT GET IT IN WITHOUT THE EMPLOYEES.

ZIMMERMAN TESTIFIED THAT HE WAS IN ATTENDANCE AT THE MEETING IN THE RODIE HOME ON NOVEMBER 8TH. HIS EVIDENCE IS THAT HE EXPLAINED THE BOARD'S CERTIFICATION PROCEDURE WITH REGARD TO MEMBERSHIP REQUIREMENTS. HE TOLD THEM THAT IF THE UNION WERE CERTIFIED IT WOULD TRY TO GET THEM BETTER WAGES AND WORKING CONDITIONS INCLUDING A GUARANTEED WORK WEEK. HE INFORMED THEM

THAT THE UNION HAD CONTRACTS WITH OTHER COMPANIES IN TORONTO AND ALSO WITH THE PARENT COMPANY IN CHICAGO. HE SAID THAT THE RELATIONSHIP BETWEEN THE UNION AND THE COMPANY IN CHICAGO WAS VERY GOOD AND THAT HE BELIEVED THE COMPANY WOULD NOT OBJECT TO THE UNION COMING INTO THE PLANT. HE TESTIFIED THAT HE MADE SIMILAR STATEMENTS TO SHARON SMITH ON NOVEMBER 12TH.

LET US ASSUME FOR PURPOSES OF ARGUMENT, BUT WITHOUT MAKING A FINDING THAT ZIMMERMAN DID MAKE THE STATEMENT ATTRIBUTED TO HIM BY THE THREE EMPLOYEES WITH RESPECT TO THE ATTITUDE OF THE COMPANY TOWARD THE UNION. IT MUST HAVE BEEN OBVIOUS TO THE EMPLOYEES THAT HE WAS MAKING A "SALES PITCH" TO GAIN SUPPORT FOR THE APPLICANT UNION. CONSIDERING THE MISREPRESENTATION IN THIS LIGHT AND IN THE CONTEXT OF ALL HIS REMARKS WE DO NOT THINK THAT THE EMPLOYEES WERE SO MISLED AS TO IMPAIR THEIR ABILITY TO MAKE A REASONABLE EVALUATION OF HIS "PITCH" AND TO DETERMINE ITS TRUE WORTH. CERTAINLY NOTHING WAS SAID WHICH CAN BE INTERPRETED AS AN ATTEMPT TO INTIMIDATE OR COERCE THE EMPLOYEES. THE EMPLOYEES MUST HAVE KNOWN THAT AS A UNION ORGANIZER ZIMMERMAN COULD NOT AFFECT THEIR EMPLOYMENT STATUS. IN ALL THE CIRCUMSTANCES WE DO NOT FIND THAT THE MISREPRESENTATION AMOUNTS TO FRAUD. THE EMPLOYEES CLEARLY UNDERSTOOD THAT THEY WERE BEING ASKED TO JOIN AN INTERNATIONAL TRADE UNION AND ZIMMERMAN OUTLINED TO THEM THE ECONOMIC OBJECTIVES WHICH THE UNION INTENDED TO PURSUE IN RELATION TO THE RESPONDENT COMPANY. THESE OBJECTIVES ARE HARDLY COMPATIBLE WITH THE COMPANY WANTING THE UNION IN THE PLANT. NEVERTHELESS, EACH OF THE THREE EMPLOYEES TESTIFIED THAT SHE JOINED THE UNION BECAUSE SHE BELIEVED ZIMMERMAN'S STATEMENT. IN DETERMINING THE WEIGHT TO BE GIVEN TO THIS PORTION OF THEIR EVIDENCE WE ARE NOT UNMINDFUL OF THE FACT THAT THREE MONTHS HAD ELAPSED SINCE THEY HAD JOINED THE UNION. REFERRING SPECIFICALLY TO THE EVIDENCE, ANNE ASHTON TESTIFIED THAT EVEN AFTER ZIMMERMAN'S SPEECH SHE WAS NOT PREPARED TO JOIN THE UNION. IT APPEARS FROM HER TESTIMONY THAT SHE ONLY SIGNED A MEMBERSHIP CARD AS A RESULT OF THE URGING OF OTHER EMPLOYEES WHO WERE PRESENT. ERNA PETERS STATED THAT SHE THOUGHT IT WAS VERY UNUSUAL THAT THE COMPANY WANTED THE UNION. IN VIEW OF THE ECONOMIC DEMANDS WHICH ZIMMERMAN INFORMED THE EMPLOYEES HE INTENDED TO MAKE ON THE COMPANY WE ARE NOT SURPRISED THAT SHE THOUGHT IT WAS UNUSUAL OR EVEN INCREDIBLE. THE EVIDENCE OF SHARON SMITH IS SO UNCERTAIN THAT WE CAN GIVE LITTLE WEIGHT TO HER TESTIMONY. CONSIDERING THE EVIDENCE OF THE THREE WOMEN IN ITS TOTALITY, WE DO NOT ACCEPT THEIR HINDSIGHT EXPLANATION FOR JOINING THE APPLICANT UNION. IN OUR OPINION, THE EMPLOYEES WERE QUITE CAPABLE OF MAKING, AND IN FACT, DID MAKE THE DECISION TO JOIN THE APPLICANT UNION OF THEIR OWN VOLITION.

THE BOARD, ACCORDINGLY, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, DENIES THE RESPONDENT'S REQUEST THAT THE BOARD REVOKE ITS CERTIFICATE DATED DECEMBER 19TH, 1963."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:

"I DISSENT.

ON THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER, I AM SATISFIED THAT THE UNION REPRESENTATIVE, MORRIS ZIMMERMAN, AT A MEETING OF EMPLOYEES OF THE RESPONDENT HELD IN JOYCE RODIE'S APARTMENT ON NOVEMBER 8TH, 1963 TOLD THOSE PRESENT THAT:



- (1) THE APPLICANT UNION REPRESENTED (THE EMPLOYEES AT) THE AMERICAN PARENT FIRM IN CHICAGO;
- (2) THE RELATIONSHIP BETWEEN THAT COMPANY AND THE UNION WAS IDEAL;
- (3) ACTUALLY THE (CANADIAN) FIRM WANTED THE UNION IN BUT THIS IS SOMETHING THEY (THE FIRM) CANNOT DO FOR THEMSELVES; AND
- (4) THE EMPLOYEES WOULD HAVE TO DO IT FOR THEM.

IN EXPLAINING THE REASONS FOR MENTIONING THE PARENT COMPANY, ZIMMERMAN TESTIFIED UNDER OATH THAT "WE HAVE FOUND IN PAST PRACTICE THAT WHERE OUR UNION IS ONE PLANT OF A COMPANY AND WE ARE TRYING TO ORGANIZE ANOTHER BRANCH, IT TENDS TO LESSEN THEIR (THE EMPLOYEES) FEARS."

IN MY OPINION IT WAS MOST IMPROPER AND UNTRUTHFUL FOR ZIMMERMAN TO STATE THAT THE CANADIAN COMPANY WANTED THE UNION AND DESIRED THE EMPLOYEES TO TAKE STEPS TO HAVE IT CERTIFIED AS THEIR BARGAINING AGENT. HE HAD NO KNOWLEDGE AS TO THE COMPANY'S POSITION IN THIS MATTER. I MUST CONCLUDE, THEREFORE, THAT HIS STATEMENT WAS DELIBERATELY DESIGNED TO MISLEAD THE UNSUSPECTING EMPLOYEES BY HAVING THEM BELIEVE THE CANADIAN COMPANY ACTUALLY WANTED THE UNION.

FOR THESE REASONS, I CANNOT GIVE FULL WEIGHT TO APPLICATIONS FOR MEMBERSHIP SIGNED FOLLOWING THE MAKING OF SUCH STATEMENTS BY ZIMMERMAN WHICH WERE AN INTEGRAL PART OF THE ORGANIZATIONAL CAMPAIGN. TO ASCERTAIN THE TRUE WISHES OF THE EMPLOYEES, I WOULD REVOKE THE BOARD'S CERTIFICATE DATED DECEMBER 19TH, 1963 AND DIRECT THAT A REPRESENTATION VOTE BE CONDUCTED. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION."

#### SECTION 65 INDEXED ENDORSEMENT

8145-63-U:

JOSEPH EDWARD SMITH (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, DISTRICT COUNCIL OFFICE (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT, IN HIS STATEMENT TO THE FIELD OFFICER IN THIS MATTER, HAS MADE A NUMBER OF REQUESTS OF THE BOARD AS FOLLOWS:

- (1) HE ASKS THE BOARD TO "LIFT" A SUSPENSION IMPOSED UPON HIM BY THE DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WHICH PREVENTS HIM FROM ATTENDING OR VOTING AT MEETINGS OF THE DISTRICT COUNCIL FOR A PERIOD OF FIVE YEARS, SO THAT HE COULD RUN FOR OFFICE IN THE DISTRICT COUNCIL AT AN ELECTION TO BE HELD IN JUNE.

- ( ii ) HE ASKS THAT THE BOARD DISALLOW A DIRECTIVE WHICH, HE ALLEGES, WAS ISSUED BY THE GENERAL EXECUTIVE BOARD OF THE UNION, REQUIRING MEMBERS TO PURCHASE A WORK CARD PERIODICALLY.
- ( iii ) HE ASKS THE BOARD TO "CALL A MASS MEMBERSHIP MEETING OF THE UNION AND HAVE THE MEMBERSHIP DECIDE" ON CERTAIN ACTIONS OF THE UNION WHICH, HE ALLEGES, ARE DISCRIMINATORY.
- ( iv ) HE APPEARS TO ASK THE BOARD TO DIRECT THE DISTRICT COUNCIL TO COMPENSATE HIM FOR LOSS HE HAS SUSTAINED BECAUSE, AS HE ALLEGES, BUSINESS AGENTS OF THE DISTRICT COUNCIL, WHOM, INCIDENTALLY, HE DOES NOT NAME, HAVE DISCRIMINATED AGAINST HIM BY REFUSING TO ASSIGN HIM TO JOBS THROUGH "THE UNION HIRING SYSTEM".

IT MUST BE BORNE IN MIND THAT, AT THIS STAGE OF THE PROCEEDINGS - THE "SCREENING STAGE" (SEE PRACTICE NOTE #1) - THE BOARD IS CONCERNED PRIMARILY WITH THE STATEMENTS MADE TO THE FIELD OFFICER BY OR ON BEHALF OF THE AGGRIEVED PERSON, AND THE BOARD MAKES ITS DECISION, AS TO WHETHER FURTHER INQUIRY SHOULD BE MADE BY THE BOARD, ON THE BASIS OF WHAT IS CONTAINED IN THE STATEMENT THE AGGRIEVED PERSON HAS MADE TO THE FIELD OFFICER. SINCE THE PERSONS WHO MADE THESE STATEMENTS HAVE NOT BEEN SUBJECTED TO CROSS-EXAMINATION, THE SCREENING PANEL OF THE BOARD MUST TAKE THE STATEMENTS AT FACE VALUE. HOWEVER, IT DOES SO SOLELY FOR THE PURPOSE OF DETERMINING WHETHER THE STATEMENTS WARRANT FURTHER INQUIRY BY THE BOARD; AT THIS STAGE OF THE PROCEEDINGS THE BOARD MAKES NO DETERMINATION AS TO WHETHER THEY ARE TRUE OR UNTRUE. THE CONCLUSIONS SET OUT BELOW MUST THEREFORE BE VIEWED IN LIGHT OF THESE CONSIDERATIONS.

ANY REMEDY THE COMPLAINANT MAY HAVE WITH RESPECT TO HEADS (i), (ii) AND (iii) ABOVE DO NOT FALL WITHIN THE JURISDICTION OF THE BOARD ON A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT AND HE MUST SEEK RELIEF WITH RESPECT TO THEM ELSEWHERE. FOR EXAMPLE, IF HE ALLEGES THAT THE CONSTITUTION OF THE RESPONDENT HAS BEEN VIOLATED, HE COULD LAUNCH AN APPEAL TO THE PROPER AUTHORITY WITHIN THE PARENT BODY OF THE UNION UNDER THE PROVISIONS OF THE UNION CONSTITUTION. AGAIN, HE MIGHT INSTITUTE AN APPROPRIATE PROCEEDING IN THE COURTS.

IN SO FAR AS HEAD (iv) IS CONCERNED, AS WE HAVE POINTED OUT IN A NUMBER OF CASES- THE NATIONAL SEA PRODUCTS, LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62 AND HEIST INDUSTRIAL SERVICES CASE (1962) C.C.H. CANADIAN LABOUR LAW REPORTS, PP.16,263, C.L.S. 76-912 - SECTION 65 OF THE LABOUR RELATIONS ACT IS MERELY A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED OR OTHERWISE DEALT WITH CONTRARY TO SOME OTHER SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT. THE COMPLAINANT IN HIS COMPLAINT STATED THAT THE CONDUCT OF WHICH HE COMPLAINS WAS CONTRARY TO SUBSECTION 2 OF SECTION 59A OF THE ACT. THERE IS NOTHING IN THE STATEMENT THAT HE HAS MADE TO THE FIELD OFFICER THAT WOULD SUPPORT AN APPLICATION ON THAT GROUND.

WE HAVE EXAMINED THE OTHER SECTIONS OF THE ACT AND THERE IS NOTHING IN THE STATEMENT OF THE AGGRIEVED PERSON TO INDICATE THAT, UP TO THE TIME OF THE FILING OF THE COMPLAINT, THERE HAS BEEN A VIOLATION BY THE DISTRICT COUNCIL, THE RESPONDENT NAMED IN THESE PROCEEDINGS, OF ANY OTHER SECTION OF THE ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED."

#### CONCILIATION SERVICES INDEXED ENDORSEMENT

7653-63-C: THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1904 (APPLICANT) v. SUDBURY PAINT AND WALLPAPER Co. LTD.; EDDIE WINCHESTER PAINTING CONTRACTOR; DENIS BIRO PAINTING AND JOINT FILLING CONTRACTORS; EXCELSIOR PAINTING & STEEPLE JACK CONTRACTORS; CARL HORNE PAINTING CONTRACTOR; MIRKO MILANOV PAINTING CONTRACTOR; THE FOUNDATION Co. OF CANADA, LIMITED (RESPONDENTS). (WITHDRAWN APRIL, 1964).

ON FEBRUARY 7, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"ALTHOUGH IT WOULD APPEAR THAT THE NOTICE TO BARGAIN GIVEN BY THE APPLICANT TO THE VARIOUS RESPONDENTS (WITH THE EXCEPTION OF THE FOUNDATION Co. OF CANADA, LIMITED) WAS LATE, THE COLLECTIVE AGREEMENTS IN QUESTION DID NOT PROVIDE FOR THEIR RENEWAL IN THE EVENT OF FAILURE TO GIVE NOTICE WITHIN THE TIME PRESCRIBED BY THE AGREEMENTS. THE AGREEMENTS HAVE THUS CEASED TO OPERATE. HOWEVER, THE APPLICANT DOES NOT THEREBY LOSE ITS BARGAINING RIGHTS AND THE POLICY OF THE BOARD IN SUCH CIRCUMSTANCES HAS ALWAYS BEEN THAT THE OBLIGATION OF THE PARTIES TO BARGAIN CONTINUES.

IN THE PRESENT CASE IT SEEMS DOUBTFUL THAT ANY EFFECTIVE BARGAINING HAS TAKEN PLACE. ONE RESPONDENT ALLEGES THAT IT WAS NOT NOTIFIED OF THE TIME OF THE PROPOSED MEETING BUT INDICATES THAT IT IS READY AND WILLING TO BARGAIN. FOUR OTHER RESPONDENTS TAKE THE POSITION THAT THE MEETING SCHEDULED FOR JANUARY 14TH WAS CALLED OFF BY THE APPLICANT. THE APPLICANT STATES THAT THE MEETING TOOK PLACE BUT ONLY THREE EMPLOYERS APPEARED. ONE RESPONDENT ALLEGES THAT IT HAS NO EMPLOYEES AND FURTHER THAT THE APPLICANT VERBALLY AGREED WITH IT THAT THERE WAS NO POINT IN MEETING. NONE OF THE RESPONDENTS HAS REQUESTED A HEARING.

IN ALL THE CIRCUMSTANCES WE ARE OF THE OPINION THAT THE PROPER ORDER IN THIS CASE, AT THIS TIME, IS TO DIRECT THE PARTIES TO MEET AND BARGAIN. THE APPLICANT SHOULD MAKE CERTAIN THAT ALL EMPLOYERS RECEIVE PROPER NOTIFICATION OF MEETINGS. THE ABOVE DIRECTION TO MEET WILL ENABLE THE APPLICANT AND THE FOUNDATION Co. OF CANADA, LIMITED TO CLARIFY THEIR RESPECTIVE POSITIONS."

8312-64-C: LUMBER & SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BOB IRWIN READY-MIXED CONCRETE LIMITED (RESPONDENT). (REFERRED APRIL 1964).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE APPLICANT ALLEGES THAT THE RESPONDENT IS AN EMPLOYER WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY. IN THE ABSENCE OF EVIDENCE ON THIS MATTER THE BOARD IS IN NO POSITION TO MAKE A DETERMINATION ON THE POINT. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE FACT THAT THE APPLICANT IS CLEARLY ENTITLED TO CONCILIATION, THE BOARD HAS DECIDED TO GRANT CONCILIATION TO THE PARTIES, BUT NOT UNDER THE PROVISIONS OF THE ACT DEALING WITH THE CONSTRUCTION INDUSTRY. IT IS ALWAYS

OPEN TO THE APPLICANT TO REQUEST RECONSIDERATION UNDER SECTION 79 OF THE ACT."

TRUSTEESHIP REPORTS FILED WITH THE BOARD

17-63

CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY:

"SUPERVISION" ASSUMED ON DECEMBER 17, 1963. WILLIAM STEFANOVITCH APPOINTED TO EXERCISE SUPERVISION ON AUTHORITY OF GENERAL EXECUTIVE BOARD OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. REPORT FILED BY JOHN R. STEVENSON, FIRST GENERAL VICE-PRESIDENT, AND R. E. LIVINGSTON, GENERAL SECRETARY.

18-63

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL UNION 27, 666, 681, 1190, 1487, 1747, 1963, 2309,  
2679, 2914-S, 2956, 2965, 2968, 3219, 3227 AND 3233:

"SUPERVISION" ASSUMED ON DECEMBER 17, 1963. WILLIAM STEFANOVITCH APPOINTED TO EXERCISE SUPERVISION ON AUTHORITY OF GENERAL EXECUTIVE BOARD OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. REPORT FILED BY JOHN R. SEVENSON, FIRST GENERAL VICE-PRESIDENT AND R.E. LIVINGSTON, GENERAL SECRETARY.



STATISTICAL TABLES FOR APRIL 1964

TABLE 1

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF APPLICATIONS FILED		
	<u>APRIL 1ST MONTH OF FISCAL YEAR</u>		
	<u>1964</u>	<u>64-65</u>	<u>63-64</u>
I CERTIFICATION	74	74	65
II DECLARATION TERMINATING BARGAINING RIGHTS	6	6	9
III DECLARATION OF SUCCESSOR STATUS	-	-	1
IV CONCILIATION SERVICES	115	115	126
V DECLARATION THAT STRIKE UNLAWFUL	-	-	-
VI DECLARATION THAT LOCKOUT UNLAWFUL	-	-	-
VII CONSENT TO PROSECUTE	5	5	4
VIII COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	8	14
IX MISCELLANEOUS	-	-	1
<u>TOTAL</u>	<u>208</u>	<u>208</u>	<u>220</u>

TABLE 11

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	<u>APRIL 1ST MONTH OF FISCAL YEAR</u>		
	<u>1964</u>	<u>64-65</u>	<u>63-64</u>
HEARING & CONTINUATION OF HEARINGS BY THE BOARD	94	94	95

TABLE 111

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR  
RELATIONS BOARD BY MAJOR TYPES

		NUMBER OF APPLICATIONS DISPOSED OF APR L 1ST MONTH OF FISCAL YEAR		
		<u>1964</u>	<u>64-65</u>	<u>63-64</u>
1	CERTIFICATION	76	76	73
11	DECLARATION TERMINATING BARGAINING RIGHTS	4	4	15
111	DECLARATION OF SUCCESSOR STATUS	1	1	1
1V	CONCILIATION SERVICES	162	162	130
V	DECLARATION THAT STRIKE UNLAWFUL	-	-	-
V1	DECLARATION THAT LOCKOUT UNLAWFUL	-	-	-
V11	CONSENT TO PROSECUTE	3	3	3
V111	COMPLAINF OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	20	20	11
1X	MISCELLANEOUS	<u>1</u>	<u>1</u>	<u>-</u>
<u>TOTAL</u>		<u>267</u>	<u>267</u>	<u>233</u>

TABLE 1V

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY TYPES AND BY DISPOSITION

DISPOSITION	APR. 1ST MONTH FISCAL YEAR			*EMPLOYEES		
	APR. 1ST MONTH FISCAL YEAR			APR. 1ST MONTH FISCAL YEAR		
	1964	64-65	63-64	1964	64-65	63-64
<u>1 CERTIFICATION</u>						
GRANTED	58	58	58	2326	2326	1917
DISMISSED	13	13	8	1601	1601	331
WITHDRAWN	<u>5</u>	<u>5</u>	<u>6</u>	<u>72</u>	<u>72</u>	<u>92</u>
<u>TOTAL</u>	<u>76</u>	<u>76</u>	<u>72</u>	<u>3999</u>	<u>3999</u>	<u>2340</u>
<u>II TERMINATION OF BARGAINING RIGHTS</u>						
TERMINATED	3	3	12	33	33	285
DISMISSED	-	-	3	-	-	55
WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>	<u>64</u>	<u>64</u>	<u>-</u>
<u>TOTAL</u>	<u>4</u>	<u>4</u>	<u>15</u>	<u>97</u>	<u>97</u>	<u>340</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

APPLICATIONS DISPOSED OF BY  
BOARD (CONTINUED)

NUMBER OF APPLICATIONS DISPOSED OF  
APR. 1ST MONTH FISCAL YEAR

	1964	64-65	63-64
<u>11 CONCILIATION SERVICES*</u>			
REFERRED	14	148	127
DISMISSED	3	6	1
WITHDRAWN	8	8	2
<u>TOTAL</u>	<u>162</u>	<u>162</u>	<u>130</u>
<u>IV DECLARATION THAT STRIKE UNLAWFUL</u>			
GRANTED	-	-	-
DISMISSED	-	-	-
WITHDRAWN	-	-	-
<u>TOTAL</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>V DECLARATION THAT LOCKOUT UNLAWFUL</u>			
GRANTED	-	-	-
DISMISSED	-	-	-
WITHDRAWN	-	-	-
<u>TOTAL</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>VI CONSENT TO PROSECUTE</u>			
GRANTED	1	1	2
DISMISSED	1	1	-
WITHDRAWN	1	1	1
<u>TOTAL</u>	<u>3</u>	<u>3</u>	<u>3</u>

\*INCLUDES APPLICATIONS FOR CONCILIATION SERVICES RE UNIONS  
CLAIMING SUCCESSOR STATUS.



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE BOARD

	NUMBER OF VOTES		
	APR. 1 <sup>ST</sup> MONTH OF FISCAL YEAR		
	1964	62-65	63-64
<u>* CERTIFICATION AFTER VOTE</u>			
PRE-HEARING VOTE	4	4	2
POST-HEARING VOTE	2	2	9
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	-	-
POST-HEARING VOTE	9	9	4
BALLOTS NOT COUNTED	-	-	-
<u>TOTAL</u>	<u>15</u>	<u>15</u>	<u>15</u>

\* INCLUDES APPLICANT - INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

BY THE BOARD

	NUMBER		
	APR. 1 <sup>ST</sup> MONTH OF FISCAL YEAR		
	1964	64-65	63-64
RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	2	2	6
<u>TOTAL</u>	<u>2</u>	<u>2</u>	<u>7</u>

IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN, THE APPLICANT IS A GROUP OF EMPLOYEES, OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



MAY, 1964



ONTARIO

# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1964.

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

7751-63-R: HOTELS, CLUBS, RESTAURANTS AND TAVERNS EMPLOYEES UNION, LOCAL 261, AFFILIATED WITH THE A.F. OF L - C.I.O AND C.L.C (APPLICANT) V. BRUCE MACDONALD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS THE BRUCE MACDONALD MOTOR HOTEL AT OTTAWA, SAVE AND EXCEPT MANAGER, DEPARTMENT HEADS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT OPERATES THE FOLLOWING ENTERPRISES:

- (I) THE BRUCE MACDONALD MOTOR HOTEL AT OTTAWA,
- (II) THE BRUCE MACDONALD MOTOR LODGE, 1 1/2 MILES EAST OF OTTAWA IN NEPEAN TOWNSHIP,
- (III) THE DUVERNAY HOTEL, HULL, QUEBEC,
- (IV) 4 DRIVE-IN RESTAURANTS KNOWN AS ROYAL BURGER, AT OTTAWA,
- (V) 1 DRIVE-IN RESTAURANT KNOWN AS ROYAL DONUT AT OTTAWA,
- (VI) 1 RESTAURANT KNOWN AS ROYAL BURGER AT OTTAWA,
- (VII) 1 RESTAURANT KNOWN AS SMITTY'S PANCAKE HOUSE AT OTTAWA.

THE RESPONDENT HAS TRANSFERRED SOME OF ITS EMPLOYEES BETWEEN MANY OF THE ABOVE LOCATIONS. SINCE THESE TRANSFERS ARE OF LONG TERM IF NOT OF PERMANENT DURATION THEY ARE NOT WHAT MIGHT OTHERWISE BE DESCRIBED AS INTERCHANGE OF EMPLOYEES. IN ADDITION SOME OF THE ENTERPRISES ARE PHYSICALLY LOCATED IN DIFFERENT GEOGRAPHIC AREAS. EACH ENTERPRISE IS SEPARATE AND DISTINCT IN ITSELF AND IS READILY DISTINGUISHABLE FROM THE OTHER. THERE IS NO FUNCTIONAL COHERENCE OR INTERDEPENDENCE BETWEEN THE GROUPS OF EMPLOYEES IN THE VARIOUS ENTERPRISES. THE EMPLOYEES OF THE VARIOUS ENTERPRISES ARE NOT INTERMINGLED SO THAT THE BOARD COULD PROPERLY SAY THAT THEY FORM ONE BARGAINING UNIT."

7936-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, (APPLICANT) V. CRONIN'S LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT ESPANOLA, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT)

8148-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. CHEMICAL SPECIALTIES ASSN. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT)

8184-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 869 (APPLICANT)  
V. SIMPSON'S-SEARS LIMITED (RESPONDENT)

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT'S PREMISES AT 2165 CARLING AVENUE, OTTAWA." (4 EMPLOYEES IN THE UNIT)

8212-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON-  
WORKERS LOCAL 721 (APPLICANT) V. H.M. BROOKS LIMITED (RESPONDENT)

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN OSHAWA AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT)

8218-64-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA)  
(APPLICANT) V. BARRON DIAMOND DRILLING LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAILEYBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT SUBMITTED AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

8228-64-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION (APPLICANT) V. THE SUDBURY RIDING AND DRIVING PARK ASSOCIATION LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-MUTUEL DEPARTMENT AT ITS TROTTERING OR HARNESS RACING OPERATIONS SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS, ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS, PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF." (312 EMPLOYEES IN THE UNIT)

8248-64-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE U.S.A. AND CANADA LOCAL 905 (APPLICANT) V. N.W. MORRISON LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STRATHROY PLANT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, DRIVERS, HOME WORKERS AND OFFICE STAFF." (26 EMPLOYEES IN THE UNIT)



8271-64-R: UNITED PACKINGHOUSE, FOOD & ALLIED WORKERS, AFFILIATED WITH CLC-AFL-CIO. (APPLICANT) V. CLARK FOODS LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HARROW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (78 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS FIELD MEN AND THE CHIEF ENGINEER ARE EXCLUDED FROM THE BARGAINING UNIT.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT TIME KEEPERS ARE MEMBERS OF THE OFFICE STAFF AND ACCORDINGLY ARE EXCLUDED FROM THE BARGAINING UNIT."

8272-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 869 (APPLICANT) V. VAIL'S FABRIC CARE LIMITED (RESPONDENT)

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT OTTAWA." (2 EMPLOYEES IN THE UNIT)

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

"I DISSENT. I WOULD FIND THAT JOHN C. CURTIN DOES NOT STAND A REGULAR SHIFT AND I WOULD FURTHER FIND THAT HE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND SHOULD THEREFORE NOT BE INCLUDED IN THE BARGAINING UNIT."

8283-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO EMPLOYED ON THE CARETAKING AND MAINTENANCE STAFFS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (42 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STATIONARY ENGINEERS ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER NOTES THAT BILL 81, AN ACT RESPECTING RYERSON POLYTECHNICAL INSTITUTE CAME INTO FORCE ON APRIL 1ST, 1964 BY PROCLAMATION OF THE LIEUTENANT GOVERNOR."

8321-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWNSHIP OF NORTH YORK (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS TRANSPORTATION DEPARTMENT AND WAREHOUSE DEPARTMENT IN THE TOWNSHIP OF NORTH YORK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (56 EMPLOYEES IN THE UNIT)

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STOCK CLERKS ARE NOT INCLUDED IN THE BARGAINING UNIT.

8325-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CORNELIS VANDER STELT (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 87)

8328-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ASSOCIATED CARTAGE (ONTARIO) LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WHILE THE BOARD IS SATISFIED THAT FOUR OF THE TWENTY DOCUMENTS SUBMITTED BY EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ARE INDICATIVE OF A VOLUNTARY EXPRESSION OF OPPOSITION TO THE APPLICATION OF THE APPLICANT, THERE IS NO EVIDENCE BEFORE THE BOARD AS TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND PREPARATION OF THE REMAINING SIXTEEN DOCUMENTS. ON THE BASIS OF THE EVIDENCE BEFORE IT THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

8334-64-R" FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL/CIO (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN WELLAND REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN UNIT)

8335-64-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. ECONOMY PEST CONTROL CO. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT)

8336-64-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. KENILWORTH JOCKEY CLUB LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-MUTUEL DEPARTMENT AT ITS TROTTERING OR HARNESS RACING OPERATIONS SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS, ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS, PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF." (299 EMPLOYEES IN THE UNIT)

8352-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. NADECO LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN IN CORNELIS VANDER STELT BOARD FILE NUMBER 8325-64-R, THE BOARD FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

ALTHOUGH THE APPLICANT AND THE RESPONDENT AGREE ON THE AREA, THIS AREA, NAMELY THE COUNTY OF YORK, DOES NOT CONFORM WITH THE ESTABLISHED PATTERN OF COLLECTIVE BARGAINING WITH RESPECT TO THE LOCATION OF THE JOB SITE. NO REPRESENTATIONS HAVE BEEN MADE IN SUPPORT OF THE DEPARTURE PROPOSED AND THE BOARD SEES NO REASON TO DEPART FROM THE ESTABLISHED PATTERN."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"FOR THE REASONS GIVEN IN CORNELIS VANDER STELT, I WOULD NOT HAVE CERTIFIED THE APPLICANT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT."

8356-64-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (APPLICANT) v. KAYSON PLASTIC & CHEMICALS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY STAFF, UNIVERSITY OF WATERLOO STUDENTS WHO ARE ENGAGED FROM TIME TO TIME AS PART OF THEIR UNIVERSITY TRAINING AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (80 PERSONS IN UNIT)

(HAVING REGARD TO AGREEMENT OF PARTIES).

8357-64-R: SARNIA MARKETING EMPLOYEES ASSOCIATION, SUN OIL COMPANY LIMITED (APPLICANT) v. SUN OIL COMPANY LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MARKETING DEPARTMENT AT SARNIA, SAVE AND EXCEPT SUPERINTENDENTS, ASSISTANT SUPERINTENDENTS AND PERSONS ABOVE THOSE RANKS." (8 EMPLOYEES IN THE UNIT)

8368A-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 837, HAMILTON, ONTARIO (APPLICANT) v. THE FRANK LAWRENCE CONSTRUCTION LIMITED (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 88)

8375-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204 (APPLICANT) V. JOHN NOBLE HOME (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 700 (INTERVENER)

UNIT: "HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STATIONARY ENGINEERS AND THEIR APPRENTICES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (87 EMPLOYEES IN THE UNIT)

8260-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BRINK'S EXPRESS COMPANY OF CANADA LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT BRANCH MANAGER, PERSONS ABOVE THE RANK OF BRANCH MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT)

8379-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SANDWICH SOUTH TOWNSHIP (RESPONDENT)

UNIT: "ALL EMPLOYEES IN THE ROAD DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (2 EMPLOYEES IN THE UNIT)

8389-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FRASER-BRACE ENGINEERING COMPANY, LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF KINGSTON AND WITHIN A TWENTY-FIVE MILE RADIUS FROM THE CITY LIMITS OF THE SAID CITY OF KINGSTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSE OF CLARITY THE BOARD DECLARES THAT "SIMILAR EQUIPMENT" INCLUDES MOBILE TRUCK CRANES AND FORK LIFTS."



THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:

"COLLECTIVE AGREEMENTS ON FILE WITH THE BOARD INDICATE THERE IS NO CONSISTENT AREA PATTERN FOR KINGSTON. A SIMILAR SITUATION PREVAILED IN FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE, FILE NUMBER 7931-63-R. IN THAT CASE THE BOARD GRANTED AN AREA COMPRISED OF THE CITY OF KINGSTON AND WITHIN A TWENTY-FIVE MILE RADIUS FROM THE CITY LIMITS OF THE SAID CITY OF KINGSTON. ALTHOUGH THIS IS NOT TO BE REGARDED AS A PRECEDENT THE BOARD HAS DECIDED TO FOLLOW ITS DECISION IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE, FILE NUMBER 7931-63-R. HOWEVER, THE BOARD WISHES TO MAKE IT KNOWN THAT IT INTENDS HOLDING A HEARING IN KINGSTON IN THE NEAR FUTURE IN ORDER TO ENTERTAIN REPRESENTATIONS FROM ALL INTERESTED TRADE UNIONS AND EMPLOYERS ON THE SUBJECT OF AN APPROPRIATE AREA FOR KINGSTON REGION. INTERESTED PERSONS WILL BE INVITED TO APPEAR BEFORE THE BOARD AND MAKE THEIR REPRESENTATIONS."

8392-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. CARTERS BEVERAGES (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT)

8405-64-R: TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HOME GRILL ENTERPRISES LIMITED (RESPONDENT)

UNIT: "ALL DRIVERS EMPLOYED BY THE RESPONDENT AT SARNIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (5 EMPLOYEES)

8406-64-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC. (APPLICANT) V. LIMESTONE QUARRIES LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS UNTHOFF QUARRY IN THE TOWNSHIP OF NORTH ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (62 EMPLOYEES IN THE UNIT)

8407-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KNIGHT INDUSTRIES (1964) LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN HAMILTON AND DUNDAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (63 EMPLOYEES IN THE UNIT)

8417-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACME STEEL COMPANY OF CANADA LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (40 EMPLOYEES IN THE UNIT)



THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS FIELD SERVICE STAFF ARE EXCLUDED FROM THE BARGAINING UNIT."

8422-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. A. C. WILSON'S DAIRY LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND MILK BAR EMPLOYEES." (8 EMPLOYEES IN THE UNIT)

8445-64-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION. (APPLICANT) V. THE ASCOT TURF CLUB, LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-MUTUEL DEPARTMENT OF ITS TROTTING OR HARNESS RACING OPERATIONS, SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS, ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS, PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF." (156 EMPLOYEES IN THE UNIT)

8447-64-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC. (APPLICANT) V. SHERBROOKE PAPER PRODUCTS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SECURITY GUARDS." (28 EMPLOYEES IN THE UNIT)

8465-64-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA (APPLICANT) V. WALLIE AMBEAULT PAINTERS (RESPONDENT)

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT)

8468-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AFL-CIO-CLC. (APPLICANT) V. GLENN S. WOOLLEY & Co. LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT)

8476-64-R: AMALGAMATED JEWELRY WORKERS' UNION, LOCAL 33, TORONTO 1, J.W.U., C.L.C. (APPLICANT) V. BARI BROS. JEWELLERS (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT)

8478-64-R: LOCAL No. 7 OTTAWA, ONTARIO OF THE BRICKLAYER, MASONS, AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. ROLAND ST-GERMAIN LIMITED (RESPONDENT)

UNIT: "ALL BRICKLAYERS, BRICKLAYER APPRENTICES, STONE MASONS AND STONE MASON APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF THE CITY OF OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT)

8479-64-R: INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA LOCAL UNION No. 1059 (APPLICANT) v. C.A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT SUBMITS THAT THE REGULAR 6 COUNTY AREAS WHICH THE BOARD HAS BEEN GRANTING, SHOULD BE RESTRICTED BECAUSE THE COLLECTIVE AGREEMENT ON WHICH THE AREA WAS BASED (BETWEEN THE LONDON BUILDING & CONSTRUCTION TRADES COUNCIL AND THE LONDON BUILDERS' EXCHANGE) DOES NOT COVER HEAVY CONSTRUCTION AND MOREOVER THE RESPONDENT IS A NON-RESIDENT CONTRACTOR IN THE AREA FOR THE FIRST TIME. HOWEVER, IT IS CLEAR FROM THE AGREEMENTS ON FILE WITH THE BOARD AND REFERRED TO BY THE APPLICANT AT THE HEARING THAT THE AREA PATTERN FOR HEAVY CONSTRUCTION IS THE SAME AS IN BUILDING CONSTRUCTION. IT IS ALSO CLEAR THAT THIS PATTERN APPLIES TO RESIDENT AND NON-RESIDENT CONTRACTORS. (SEE BALL BROTHERS LIMITED, O.L.R.B. MONTHLY REPORTS, OCT. 1962, P.236 AND NOVEMBER 1962, P.297.) FURTHERMORE IN SAM COSENTINO LTD., Bd FILE 5865-63-R, O.L.R.B. MONTHLY REPORT, APRIL, 1963, THE BOARD ISSUED A CERTIFICATE COVERING THE 6 COUNTIES IN QUESTION IN CONNECTION WITH A SEWER PROJECT IN THE CITY OF LONDON. THE RESPONDENT IN THAT CASE WAS A NON-RESIDENT CONTRACTOR."

8481-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. POOLE'S QUALITY FISH MARKET (RESPONDENT)

UNIT: "ALL DRIVERS OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT)  
(AGREEMENT OF PARTIES.)

8482-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. RIVERSIDE FISHERIES LTD. (RESPONDENT)

UNIT: "ALL DRIVERS OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT)  
(AGREEMENT OF PARTIES.)

8490-64-R: INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS', UNION OF AMERICA, LOCAL 527 (APPLICANT) v. ROLAND ST-GERMAIN LIMITED (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AT OR WORKING OUT OF THE CITY OF OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT)

8509-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WALLY MACMILLAN HAULAGE (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE COUNTY OF YORK, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."  
(6 EMPLOYEES IN THE UNIT)

8518-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(5 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE BOARD'S DECISION IN C.A. PITTS GENERAL CONTRACTOR LTD. CASE, BOARD FILE 8479-64-R, THE BOARD FINDS FURTHER THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING."

8519-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (APPLICANT) V. THE VALLEY CAMP COAL COMPANY OF CANADA LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT BURWELL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE & SALES STAFF." (11 EMPLOYEES IN THE UNIT)

8555-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. BILINSKI LATHING LIMITED (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT)

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

8151-63-R: GENERAL TRUCK DRIVERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BERRY DOOR Co. LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (58 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES ON REVISED	
ELIGIBILITY LIST	58
NUMBER OF BALLOTS CAST	58
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	32
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	26

8177-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT) V. STONEY CREEK DAIRIES LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE DAIRY DIVISION OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, INSIDE FOREMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (53 EMPLOYEES IN THE UNIT)



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	53
NUMBER OF PERSONS WHO CAST BALLOTS	53
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	32
NUMBER OF BALLOTS MARKED IN FAVOR OF THE STONEY CREEK DAIRYMEN'S ASSOCIATION.	21

8249-64-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. QUALITY MEAT PACKERS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (63 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES ON REVISED VOTERS' LIST	63
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS SEGREGATED & NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	32
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY 1964.

NO VOTE CONDUCTED

7218-63-R: OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 412, AFL-CIO-CLC. (APPLICANT) V. BATA SHOE COMPANY OF CANADA LIMITED (RESPONDENT) (103 EMPLOYEES IN THE UNIT)

8050-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 700 (APPLICANT) V. HAHN BRASS LIMITED (RESPONDENT) INTERNATIONAL ASSOCIATION OF MACHINISTS (INTERVENER) (1 EMPLOYEE IN THE UNIT)

8187-63-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DAY AND CAMPBELL (RESPONDENT) V. CHRISTIAN TRADE UNIONS OF CANADA (INTERVENER) (6 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 85 )

8419-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BURLINGTON-NELSON HOSPITAL (OPERATING JOSEPH BRANT MEMORIAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 700 (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT BURLINGTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, STATIONARY ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 700 AND THE RESPONDENT, SUPERVISORS, FOREMEN, CHIEF ENGINEER, ASSISTANT CHIEF ENGINEER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (123 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL, AND CARDIOLOGICAL TECHNICIANS."

HAVING REGARD TO ITS DECISION IN THE BURLINGTON-NELSON HOSPITAL CASE, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, JANUARY 1962, P.345, AND TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER DECLARED THAT:-

"PERSONS CLASSIFIED AS SWITCHBOARD OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT OPERATING ROOM TECHNICIANS ARE INCLUDED IN THE BARGAINING UNIT;"

AND

"WARD CLERKS ARE MEMBERS OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT."

8434-64-R: PHILLIPS TRANSPORTS EMPLOYEES ASSOCIATION (APPLICANT) V. PHILLIPS TRANSPORTS LIMITED (RESPONDENT) (77 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT THROUGH ITS WITNESSES TESTIFIED THAT MEETINGS OF EMPLOYEES WERE HELD ON COMPANY PREMISES FOR THE PURPOSE OF FORMING THE APPLICANT ASSOCIATION. THESE MEETINGS WERE CALLED BY WRITTEN NOTICES OF MEETING WHICH WERE POSTED ON THE COMPANY PREMISES WITH THE PERMISSION OF THE RESPONDENT. THE NOTICES CALLING THE MEETINGS SET OUT THE PURPOSE OF THE MEETINGS. A NOMINAL RENTAL OF \$1.00 WAS PAID FOR THE USE OF THE COMPANY PREMISES TO HOLD THE MEETINGS.

THE APPLICANT FILED MINUTES OF MEETING DATED MARCH 7TH, 1964 WHICH PURPORT TO EVIDENCE THE ELECTION OF OFFICERS OF THE APPLICANT. HOWEVER, AT THE TIME THE OFFICERS WERE ELECTED, THE APPLICANT HAD NO MEMBERS SINCE ALL THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED IN THIS MATTER APPEAR TO BE DATED SUBSEQUENT TO THE ELECTION OF THE OFFICERS.

THE APPLICANT THROUGH ITS WITNESSES TESTIFIED THAT NO CONSTITUTION OR BY-LAWS HAVE BEEN ADOPTED BY THE MEMBERSHIP OF THE APPLICANT WHICH WOULD EVIDENCE THE FORMAL EXISTENCE OF THE APPLICANT AS A TRADE UNION.

HAVING REGARD TO THE ASSISTANCE RENDERED TO THE APPLICANT BY THE RESPONDENT AND THE FACT THAT THERE IS INSUFFICIENT DOCUMENTARY EVIDENCE IN THE FORM OF A CONSTITUTION OR BY-LAWS WHICH WOULD EVIDENCE THE EXISTENCE OF THE APPLICANT, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT."



DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

8152-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. THOMAS BUILT BUSES CANADA LIMITED (RESPONDENT)

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SECURITY GUARDS AND OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT)

NUMBER OF PERSONS ON REVISED VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

7361-63-R: SPORTSWEAR LOCAL 199, INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. SUPERB SPORTSWEAR LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, SALES AND OFFICE STAFF."

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT THE CLEANER (CARETAKER) IS INCLUDED IN THE BARGAINING UNIT."

NUMBER OF NAMES ON REVISED VOTERS' LIST	38
NUMBER OF BALLOTS CAST	38
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	36

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS SUBMITTED AN APPLICATION CARD AND RECEIPT FOR ONE PLACIDA PUMO. THE EVIDENCE CLEARLY ESTABLISHES THAT PLACIDA PUMO DID NOT SIGN THE CARD OR RECEIPT BUT INSTEAD THAT THIS WAS DONE BY ONE VITA PUMO. THE APPLICANT ALSO SUBMITTED A CARD AND RECEIPT FOR VITA PUMO. WE FIND THAT THIS SECOND CARD AND RECEIPT WAS IN FACT SIGNED BY VITA PUMO, THE PERSON WHO ALSO SIGNED THE CARD BEARING THE NAME P. PUMO. IN BOTH INSTANCES THE UNION ORGANIZERS WERE THE SAME AND ON EACH OCCASION ONE DOLLAR WAS COLLECTED. THE APPLICANT ADMITS THAT THE PERSON CALLED VITA PUMO SIGNED THE CARD FOR PLACIDA PUMO BUT SAYS IN EFFECT WE, IN GOOD FAITH, BELIEVED THAT IT WAS PLACIDA PUMO WHO WAS SIGNING IT. THE APPLICANT'S POSITION AT THE OUTSET OF THE CASE WAS THAT SOMEONE OTHER THAN VITA PUMO SIGNED THE CARD BEARING THE SIGNATURE VITA PUMO. TOWARDS THE END OF THE CASE ONE OF THE WITNESSES (THE UNION ORGANIZER WHO SIGNED UP VITA PUMO) RETREATED SOMEWHAT FROM HIS EARLIER POSITIVE S AND TO THIS EXTENT -- THAT THE PERSON WHO SIGNED THE TWO CARDS COULD POSSIBLY BE THE SAME PERSON ALTHOUGH AT THE TIME EACH WAS SIGNED HE DID NOT BELIEVE SO AND HE STILL WOULD NOT SAY UNDER OATH THAT IT WAS IN FACT THE SAME PERSON WHO SIGNED THE TWO CARDS. THE UNION ORGANIZER WHO WAS PRESENT MAINTAINED THAT TWO DIFFERENT PERSONS SIGNED THE CARDS.

THERE WAS A GOOD DEAL OF EVIDENCE RESPECTING THE OCCASIONS ON WHICH THE TWO CARDS WERE SIGNED. MUCH OF THIS EVIDENCE IS OF SUCH A CONTRADICTORY NATURE THAT IT IS IMPOSSIBLE TO EXPLAIN THE CONTRADICTIONS AWAY BY LAPSE OF MEMORY. WHAT MAKES THE CASE DOUBLY DIFFICULT IS THAT THE TWO UNION ORGANIZERS TO SOME EXTENT CONTRADICT ONE ANOTHER AND SO DO THE OTHER WITNESSES WHOSE TESTIMONY DIFFERS FROM THAT OF THE UNION ORGANIZERS. CREDIBILITY THUS BECOMES A KEY FACTOR IN THE PRESENT CASE.

THE ANALYSIS OF THE EVIDENCE AND THE ARGUMENTS ADVANCED BY COUNSEL FOR THE RESPONDENT ESTABLISH A PRIMA FACIE CASE FOR HOLDING THAT THE EVIDENCE OF THE UNION ORGANIZERS OUGHT NOT TO BE ACCEPTED ON MANY MATERIAL POINTS AND WERE IT NOT FOR TWO OTHER CONSIDERATIONS WE WOULD BE INCLINED SO TO FIND. IN THE FIRST PLACE THERE ARE SOME DETAILS GIVEN WITH RESPECT TO THE EVENTS AT 98 HOLLAND PARK ROAD BY BOTH UNION ORGANIZERS THAT TEND TO NEGATIVE THE SUGGESTION THAT THEY COULD HAVE BEEN CONCOCTED IN ADVANCE. IN PARTICULAR THIS EVIDENCE DEALS WITH EVENTS WHICH THE ORGANIZERS SAY TOOK PLACE IN THE HALL. ADMITTEDLY THERE ARE DISCREPANCIES, BUT IT IS DIFFICULT TO BELIEVE, FOR EXAMPLE, THAT THE ORGANIZERS COULD HAVE SCHEMED IN ADVANCE TO SAY THAT THE BANISTER WAS THE PLACE WHERE THE RECEIPT WAS SIGNED.

SECONDLY, AND OF MORE IMPORTANCE IS THE QUESTION OF THE CREDIBILITY OF THE WITNESS VITA PUMO. THERE IS OF COURSE A DIRECT CONFLICT BETWEEN HER EVIDENCE AND THAT OF THE TWO UNION ORGANIZERS ON A NUMBER OF MATERIAL POINTS. THE PRODUCTION OF THE RECEIPT IS SOME CORROBORATION OF HER STORY BUT HER EVIDENCE, VIEWED IN THE LIGHT OF THAT OF HER HUSBAND'S TESTIMONY AS TO THE CIRCUMSTANCES SURROUNDING THE PRODUCTION OF THE RECEIPT RAISES CERTAIN DOUBTS IN OUR MINDS. IN TRYING TO ASSESS HER CREDIBILITY WE HAVE FOUND OURSELVES GREATLY HANDICAPPED BY THE FACT THAT THE WHOLE OF HER EVIDENCE WAS GIVEN THROUGH A TRANSLATOR. ONE CAN NEVER BE CERTAIN THAT THE QUESTIONS PUT AND THE ANSWERS GIVEN DO NOT SUFFER IN TRANSLATION NO MATTER HOW COMPETENT AND CONSCIENTIOUS THE TRANSLATOR MAY BE. IN ADDITION, IN NOT UNDERSTANDING WHAT THE WITNESS IS SAYING AT THE TIME IT IS SAID WE FIND OURSELVES HAMPERED IN ASSESSING THE DEMEANOUR OF THE WITNESS. NUANCES, DIFFERENT SHADES OF MEANING AND THE ACTUAL MANNER OF SPEAKING ARE LOST IN TRANSLATION.

THE ALLEGATIONS WHICH HAVE BEEN MADE AGAINST THE ORGANIZERS IN THIS CASE ARE VERY SERIOUS. WE ARE NOT PREPARED TO SAY HAVING REGARD TO THE CONSIDERATIONS OUTLINED ABOVE THAT WE ARE FREE FROM DOUBT. IN THESE CIRCUMSTANCES, WE HAVE CONCLUDED THAT A REPRESENTATION VOTE OUGHT TO BE DIRECTED.

WE SHOULD POINT OUT THAT WE DO NOT CONSIDER THE RESPONDENT'S ALLEGATIONS RESPECTING THE ADVISORY COMMITTEE UNDER THE INDUSTRIAL STANDARDS ACT AS BEING MATERIAL TO ANY ISSUE BEFORE THE BOARD, EVEN IF IT COULD BE SAID THAT IT WAS OPEN TO THE RESPONDENT TO RAISE THEM AT THE TIME OF THE HEARING WITHOUT PRIOR NOTICE."

7767 63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT)  
PEERLESS CARBON AND RIBBON CO. LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (58 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES ON REVISED VOTERS' LIST	58
NUMBER OF PERSONS WHO CAST BALLOTS	58
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	39

7906-63-R: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS  
V. RUDOLPHS FINE MEAT PRODUCTS LTD.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE MEMORANDUM OF AGREEMENT SIGNED BY THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE

RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE SECRETARY-TREASURER IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF."

NUMBER OF PERSONS ON VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS IN FAVOR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

8092-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FILTRO ELECTRIC LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE STAFF." (54 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES ON REVISED VOTERS' LIST	54
NUMBER OF PERSONS WHO CAST BALLOTS	54
NUMBER OF BALLOTS MARKED IN FAVOR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY 1964.

7661-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WINCO STEEL SALES Co. LIMITED (RESPONDENT) (51 EMPLOYEES IN THE UNIT)

8327-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ASSOCIATED CARTAGE (ONTARIO) LTD. (RESPONDENT) (26 EMPLOYEES IN THE UNIT)

8329-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DAILY FORWARDERS LTD. (RESPONDENT) (26 EMPLOYEES IN THE UNIT)

8330-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NEWFOUNDLAND FORWARDERS (RESPONDENT) (26 EMPLOYEES IN THE UNIT)

8331-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. R. & J. BARBER Co. LTD. (RESPONDENT) (26 EMPLOYEES IN THE UNIT)

8371-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. H. MALMSTROM (RESPONDENT) (IN ALL THAT PART OF NORTHWESTERN ONTARIO WEST OF A LINE RUNNING THROUGH PAGWA AND WHITE RIVER) (2 EMPLOYEES IN THE UNIT)

8372-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ERSKINE IRON AND METAL CO. LTD. (RESPONDENT) (3 EMPLOYEES IN THE UNIT)

8432-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 27, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. COSMOFORM LTD. (RESPONDENT) (12 EMPLOYEES IN THE UNIT)

8452-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204 (APPLICANT) V. BERTIE DISTRICT HIGH SCHOOL BOARD (RESPONDENT) (10 EMPLOYEES IN THE UNIT)

8517-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL #493 (APPLICANT) V. SULLIVAN & SON LIMITED (RESPONDENT) (9 EMPLOYEES IN THE UNIT)

APPLICATIONS FOR TERMINATION DISPOSED OF DURING MAY 1964.

6965-63-R: JAMES ROBINSON (APPLICANT) V. OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 131, AFL-CIO (RESPONDENT) V. DUNLOP CANADA LIMITED (INTERVENER). (GRANTED). (79 EMPLOYEES)

(RE: DUNLOP CANADA LIMITED,  
WHITBY ONTARIO).

VOTING CONSTITUENCY:

"ALL SALARIED OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF DUNLOP CANADA LIMITED, AT ITS PLANTS IN THE TOWNSHIP OF WHITBY, SAVE AND EXCEPT SECTION SUPERVISORS, PERSONS ABOVE THE RANK OF SECTION SUPERVISOR, UNIVERSITY GRADUATE TECHNICAL PERSONNEL EMPLOYED IN THAT CAPACITY, PERSONNEL DEPARTMENT EMPLOYEES, REGISTERED NURSES, SALESMEN AND DIVISION HEAD SECRETARIAL STENOGRAPHERS."

NUMBER OF PERSONS ON REVISED VOTERS' LIST

79

NUMBER OF BALLOTS CAST

79

NUMBER OF BALLOTS MARKED IN FAVOR OF

RESPONDENT

1

NUMBER OF BALLOTS MARKED AGAINST

RESPONDENT

78

(SEE INDEXED ENDORSEMENT PAGE 89)

8244-64-R: HENRY F. DARRELL (APPLICANT) V. LOCAL 540, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA WITH HEADQUARTERS IN HAWKINS COUNTY, TENNESSEE, U.S.A (RESPONDENT) V. CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION) INTERVENER) (DISMISSED) (79 EMPLOYEES)

(RE: CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION)  
HAMILTON, ONTARIO.)



ON MAY 4TH, 1964, THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD IS SATISFIED WITH THE EVIDENCE RELATING TO THE ORIGINATION OF THE DOCUMENT FILED BY THE APPLICANT. HOWEVER, THERE IS AN ONUS ON THE APPLICANT TO SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION PURSUANT TO THE PROVISION OF SECTION 43(3) OF THE LABOUR RELATIONS ACT.

BECAUSE OF THE CONFUSION OF THE WITNESSES CALLED BY THE APPLICANT WITH RESPECT TO WHICH SIGNATURES THEY WITNESSED AND THE CONTRADICTORY NATURE OF THEIR EVIDENCE, WHILE THE BOARD MAY BE SATISFIED THAT SOME OF THE EMPLOYEES IN THE BARGAINING UNIT VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF CONTINENTAL CAN COMPANY OF CANADA LIMITED (PAPER DIVISION) IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

THE BOARD WAS REQUESTED TO RECONSIDER IT'S DECISION OF MAY 4TH, 1964, AND ON MAY 14TH, 1964 IT ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WHILE THE APPLICANT HAS FORWARDED WITH ITS REQUEST A DOCUMENT PURPORTING TO BEAR THE SIGNATURES OF A MAJORITY OF THE EMPLOYEES OF THE INTERVENER WHO REQUEST THE TERMINATION OF THE BARGAINING RIGHTS OF THE RESPONDENT, THIS DOCUMENT WAS RECEIVED BY THE BOARD ON MAY 12TH, 1964, APPROXIMATELY ONE MONTH AFTER THE TERMINAL DATE IN THIS MATTER. THE BOARD IS PRECLUDED, PURSUANT TO THE PROVISIONS OF SECTION 50(1) OF THE BOARD'S RULES OF PROCEDURE, FROM ACCEPTING SUCH EVIDENCE SINCE IT WAS FILED AFTER THE TERMINAL DATE OF THE APPLICATION.

SINCE THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE TO IT AT THE HEARING IN THIS MATTER AND SINCE THE BOARD CONSIDERED ALL THE MATTERS RAISED BY THE APPLICANT AT THE HEARING PRIOR TO REACHING ITS DECISION DATED MAY 4TH, 1964, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION DATED MAY 4TH, 1964 IN THIS MATTER."

THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED.

7531-63-R: WILLIAM GUNTER (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. TRENTON RIVERSIDE DAIRY PRODUCTS LIMITED (INTERVENER) (DISMISSED). (11 EMPLOYEES)

(RE: TRENTON RIVERSIDE DAIRY PRODUCTS LIMITED  
IN AND ABOUT THE MILK AND CREAM DISTRIBUTING  
AND PASTEURIZING PLANTS,  
TRENTON AREA.)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR OUR REASONS GIVEN IN WRITING THIS APPLICATION IS DISMISSED."

BOARD MEMBER M. C. HAY DISSENTED AND SAID:-

"FOR MY REASONS GIVEN IN WRITING, I WOULD HAVE FOUND THAT THE UNION'S BARGAINING RIGHTS FOR THE EMPLOYEES OF THE FIRST PURCHASER DID NOT CONTINUE UNDER SECTION 47A (2) FOR THE EMPLOYEES OF THE INTERVENER EMPLOYER, AND I WOULD HAVE DISPOSED OF THE APPLICATION ON THAT BASIS."

8316-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) V. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L. - C.I.O., C.L.C.) (RESPONDENT) (DISMISSED).

(RE: ADANAC ORNAMENTAL IRON WORKS LIMITED  
HAMILTON, ONTARIO)

AND

8317-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) V. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L. - C.I.O., C.L.C.) (RESPONDENT) (DISMISSED).

(RE: ADANAC ORNAMENTAL IRON WORKS LIMITED  
HAMILTON, ONTARIO)

THE ABOVE MATTERS ARE CONSOLIDATED.  
(3 EMPLOYEES INVOLVED IN THESE APPLICATIONS)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE APPLICANT APPLIED ON APRIL 15TH, 1964 UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT.

THE RESPONDENT AND ADANAC ORNAMENTAL IRON WORKS LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH TERMINATED ON DECEMBER 31ST, 1963.

CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND ADANAC ORNAMENTAL IRON WORKS LIMITED ON FEBRUARY 20TH, 1964 AND SUBSEQUENTLY, ON MARCH 20TH, 1964, A CONCILIATION BOARD WAS APPOINTED.

SINCE 12 MONTHS HAVE NOT ELAPSED SINCE CONCILIATION SERVICES WERE GRANTED TO THE PARTIES NOR HAS 30 DAYS ELAPSED FOLLOWING THE REPORT OF A CONCILIATION BOARD IN THIS MATTER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY."

8396-64-R: NORMAN GRAY AND OTHERS, EMPLOYEES OF SAULT WINDSOR HOTEL LIMITED (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION LOCAL 412 (RESPONDENT) (GRANTED). (9 EMPLOYEES)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY TELEGRAM DATED MAY 7, 1964 THAT IT "NO LONGER CLAIM TO REPRESENT" THE EMPLOYEES OF SAULT WINDSOR HOTEL LIMITED, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF SAULT WINDSOR HOTEL LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

8448-64-R: MANUFACTURERS PLATING Co. LTD. (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (RESPONDENT) (GRANTED). (6 EMPLOYEES)

(RE: MANUFACTURERS PLATING Co. LTD.)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED MAY 14TH, 1964 THAT IT IS NO LONGER INTERESTED IN BEING THE BARGAINING AGENT FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF MANUFACTURERS PLATING Co. LTD. FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MAY 1964.

SECTION 47A

7633-63-R: LOCAL UNION 175 (FOOD HANDLERS) OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. SUPER CITY LIMITED (RESPONDENT) PICKERING FARMS LIMITED (INTERVENER) (METROPOLITAN TORONTO STORES AND DIXIE PLAZA)  
(SEE INDEXED ENDORSEMENT PAGE 93)

7634-63-R: LOCAL UNION 633 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL/CIO (APPLICANT) V. SUPER CITY LIMITED (RESPONDENT) V. PICKERING FARMS LIMITED (INTERVENER) (METROPOLITAN TORONTO STORES AND DIXIE PLAZA)  
(SEE INDEXED ENDORSEMENT PAGE 93)

APPLICATIONS UNDER SECTION 79 DISPOSED OF DURING MAY 1964.

7720-63-M: PRESTON AND SONS, (APPLICANT) V. THE TORONTO NEWSPAPER GUILD, LOCAL 87, AMERICAN NEWSPAPER GUILD (AFL-CIO,CLC) (RESPONDENT)

IN THIS APPLICATION THE BOARD FOUND THAT THREE NAMED PERSONS EXERCISED MANAGERIAL FUNCTIONS AND WERE THEREFORE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

7755-63-M: AMALGAMATED JEWELRY WORKERS' UNION, LOCAL 33, TORONTO (APPLICANT)  
V. LIBMAN & COMPANY LTD. (RESPONDENT)

IN THIS APPLICATION THE BOARD FOUND THAT THREE NAMED EMPLOYEES DID NOT EXERCISE MANAGERIAL FUNCTIONS AND WERE THEREFORE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING MAY 1964.

8418-64-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. McNAMARA CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT) (WITHDRAWN)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY 1964.

8376-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. WILLIAM MAHAR (RESPONDENT) (WITHDRAWN)

8381-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. LOCAL 508 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT) (WITHDRAWN)

8382-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. W. MAHAR ET AL (RESPONDENT) (WITHDRAWN)

APPLICATIONS UNDER SECTION 34 (5) DISPOSED OF DURING MAY 1964.

7406-63-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ABOLINS CONSTRUCTION LIMITED (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN IN WRITING THE BOARD FINDS THAT ABOLINS CONSTRUCTION LIMITED WAS NOT BOUND BY THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 AND THE LAKEHEAD BUILDERS' EXCHANGE, DATED APRIL 1ST, 1962."

8235-64-M: UNITED PACKINGHOUSE, FOOD, AND ALLIED WORKERS (APPLICANT) V. KITCHENER PACKERS CO. LTD. (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS A REFERENCE FROM THE HONOURABLE MINISTER OF LABOUR UNDER SECTION 34 (5) OF THE LABOUR RELATIONS ACT.

WE ARE IMPELLED TO FIND THAT THE RESPONDENT'S LETTER OF NOVEMBER 30TH, AND THE APPLICANT'S REPLY THERETO OF DECEMBER 9TH, 1963, CONSTITUTE UNEQUIVOCAL ACCEPTANCE BY THE PARTY PRINCIPALS OF ALL



THE TERMS OF THE MEMORANDUM OF SETTLEMENT EXCEPT THE UNION SECURITY PROVISION IN ARTICLE (5) (B) THEREOF.

IT IS OBVIOUS THAT THIS MEMORANDUM OF SETTLEMENT, WHATEVER ITS SHORTCOMINGS MAY OTHERWISE BE, DOES CONTAIN THE MINIMUM INGREDIENTS OF A COLLECTIVE AGREEMENT AS DEFINED IN SECTION (1) (1) (C) OF THE LABOUR RELATIONS ACT.

WE ARE CONSTRAINED TO FIND THAT WHATEVER FURTHER FORMAL DOCUMENT THE PARTIES MAY HAVE INTENDED TO EXECUTE, THAT AT LEAST UNTIL THAT TIME, THEY DID INTEND TO BE BOUND BY THE MEMORANDUM OF SETTLEMENT.

IN OUR OPINION, THEREFORE, THE MEMORANDUM OF AGREEMENT SIGNED BY THE PARTIES BEFORE THE CONCILIATION BOARD ON THE 19TH DAY OF NOVEMBER, 1963, EXCLUDING THE UNION SECURITY PROVISION IN PARAGRAPH (5) (B) THEREOF, IS A COLLECTIVE AGREEMENT BINDING UPON THE PARTIES AND THE EMPLOYEES IN THE BARGAINING UNIT."

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
MAY 1964

7745-63-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
(COMPLAINANT) V. (GLOBELITE BATTERIES LIMITED, EASTER DIVISION (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS HARVEY BROWN AND MARGARET ANDERSON WERE DISCHARGED BY L. A. HASSELL, THE GENERAL MANAGER OF THE RESPONDENT COMPANY, ON FEBRUARY 7TH, 1964 CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

HARVEY BROWN WAS HIRED BY THE RESPONDENT ON JUNE 3RD, 1963 AS ACCOUNTS PAYABLE CLERK WHEN THE COMPANY COMMENCED ITS OPERATIONS AT ITS NEW PLANT IN SCARBOROUGH. (THE COMPANY PREVIOUSLY HAD BEEN LOCATED AT KINGSTON). IN GENERAL TERMS HE WAS RESPONSIBLE FOR PROCESSING ALL INVOICES RECEIVED BY THE COMPANY, THAT IS, PREPARING CHEQUES FOR PAYMENT, POSTING THE INVOICES IN THE PROPER LEDGERS, AND RECONCILING THE INVOICES WITH THE GOODS RECEIVED. HE WAS ALSO REQUIRED TO PROVIDE A NUMBER OF REPORTS EARLY IN EACH MONTH WITH RESPECT TO THE TRANSACTIONS OF THE PREVIOUS MONTH. THE INFORMATION CONTAINED IN THE REPORTS AND LEDGERS WAS USED BY THE ACCOUNTANT ROBERT RIDER IN THE PREPARATION OF THE TRIAL BALANCE AND THE REPORTS WHICH WERE REQUIRED EACH MONTH BY THE HEAD OFFICE OF THE COMPANY IN WINNIPEG.

BOTH HASSELL AND RIDER TESTIFIED THAT BROWN WAS LATE IN PROVIDING THE MONTHLY REPORTS FOR THE MONTHS OF SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER. BROWN ADMITS THAT HE FAILED TO MEET THE DEADLINES FOR THE FIRST THREE OF THESE MONTHS BUT THAT THE DECEMBER REPORTS WERE AVAILABLE BY THE REQUIRED DATES IN JANUARY. RIDER MADE PARTICULAR REFERENCE TO BROWN'S FAILURE TO POST INTERCOMPANY INVOICES IN THE MONTH IN WHICH THE TRANSACTION OCCURRED AND THE FACT THAT HIS DELAY IN PROCESSING



ACCOUNTS OFTEN RESULTED IN THE LOSS OF CASH DISCOUNTS. BROWN, WHILE ADMITTING THE DELAYS, TESTIFIED THAT ALL SECTIONS OF THE OFFICE STAFF WERE BEHIND IN THEIR WORK. THE EVIDENCE OF STEVEN VAN LEUVENS IN SOME DEGREE CORROBORATES THE LATTER STATEMENT. HE FURTHER STATED THAT THE DELAYS WERE THE RESULT OF HIS HEAVY WORK LOAD. HE PARTICULARLY REFERRED TO THE TIME CONSUMED IN PROCESSING FREIGHT BILLS. BOTH RIDER AND HASSELL TESTIFIED THAT THE WORK HAD NOT INCREASED IN THE ACCOUNTS PAYABLE SECTION SINCE THE COMPANY MOVED TO ITS NEW LOCATION IN SCARBOROUGH. MOREOVER, PREVIOUSLY, ONE FEMALE EMPLOYEE HAD DONE THE SAME WORK AS BROWN AND ANDERSON IN COMBINATION AND STILL WAS ABLE TO SUBMIT HER REPORTS ON TIME. THE EVIDENCE OF RIDER AND HASSELL IS THAT AFTER SEPTEMBER ALL DEPARTMENTS WITH THE EXCEPTION OF ACCOUNTS PAYABLE SUBMITTED THEIR REPORTS BY THE SCHEDULED DEADLINES. BOTH ALSO TESTIFIED, AND IT WAS ADMITTED BY BROWN, THAT THEY HAD REPRIMANDED HIM FOR HIS TARDINESS. BROWN ALSO ADMITTED THAT MR. SHIRLEY, THE OFFICE MANAGER HAD SPOKEN TO HIM ABOUT THE DELAYS IN HIS WORK. RIDER'S EVIDENCE IS THAT AFTER REPEATEDLY SPEAKING TO BROWN, HE INFORMED HIM IN DECEMBER THAT UNLESS HE GOT THE INVOICES THROUGH IN THE MONTH IN WHICH THEY WERE RECEIVED THE COMPANY WAS GOING TO HAVE TO DO SOMETHING ABOUT IT. HASSELL STATED THAT THERE WERE INCREASING COMPLAINTS FROM HEAD OFFICE CONCERNING DELAYS IN RECEIVING REPORTS FROM THE SCARBOROUGH PLANT. HE AND RIDER STATED THAT THE LATENESS IN GETTING THE FIGURES FROM ACCOUNTS PAYABLE CAUSED THE DELAYS IN THE PREPARATION OF THE REPORTS FOR HEAD OFFICE. HASSELL RECEIVED A MEMORANDUM DATED DECEMBER 24TH FROM HEAD OFFICE TO THE EFFECT THAT IF THE SITUATION REGARDING THE LATENESS OF REPORTS DID NOT IMPROVE THERE WOULD BE NO ALTERNATIVE BUT TO MAKE CHANGES IN PERSONNEL. THE MEMORANDUM ALSO STATED THAT THIS WAS THE FINAL WARNING. HASSELL TESTIFIED THAT HE OFTEN TRIED TO IMPRESS ON BROWN THE IMPORTANCE OF SUPPLYING THE REQUIRED MONTHLY REPORTS TO RIDER ON TIME. IN EARLY JANUARY HE SHOWED BROWN THE HEAD OFFICE MEMORANDUM AND INFORMED HIM THAT THE LATENESS OF HIS REPORTS WAS CAUSING SERIOUS TROUBLE. BROWN'S REPLY WAS THAT IF THE DECEMBER REPORTS WERE NOT READY ON TIME HASSELL COULD FIRE HIM. ALTHOUGH THERE IS A CONFLICT IN EVIDENCE BETWEEN BROWN AND HASSELL AS TO WHETHER BROWN MET THE JANUARY DEADLINES, THE EVIDENCE GIVEN BY HASSELL WAS BASED ON COMPANY RECORDS. AS BETWEEN THE EVIDENCE OF BROWN AND HASSELL ON THIS POINT, THE BOARD ACCEPTS THE TESTIMONY OF HASSELL.

MARGARET ANDERSON WAS HIRED ON JUNE 3RD, 1963 AS A FILING CLERK. AFTER APPROXIMATELY A TWO MONTH PERIOD SHE WAS PROMOTED TO THE ACCOUNTS PAYABLE SECTION TO OPERATE THE POSTING MACHINE AND ASSIST BROWN. SHE TESTIFIED THAT MR. SHIRLEY HAD EXPRESSED SATISFACTION WITH HER PERFORMANCE AND THAT SHE HAD NEVER RECEIVED ANY CRITICISM OF HER WORK. THE EVIDENCE OF RIDER IS THAT SHE WAS NOT ACCURATE IN MAKING THE LEDGER POSTINGS WHICH CAUSED HIM TO SPEND HOURS FINDING MISTAKES IN THE TRIAL BALANCE WHICH RESULTED FROM HER ERRORS. HE STATED THAT HE HAD SPOKEN TO HER ABOUT HER INACCURACIES. HASSELL TESTIFIED THAT ALTHOUGH HE PERSONALLY HAD NOT CRITICIZED HER, HE HAD HAD TO RETURN REPORTS PREPARED BY HER BECAUSE OF INFERIOR TYPING.

HASSELL TESTIFIED THAT WHEN THE DECEMBER REPORTS WERE NOT RECEIVED BY THE JANUARY DEADLINES, HE DECIDED THAT BROWN AND ANDERSON COULD NOT CONFORM TO THE REQUIREMENTS OF THE JOB AND THAT HE WOULD HAVE TO DISPENSE WITH THEIR SERVICES. THE REASON GIVEN BY HASSELL FOR NOT ACTING ON HIS DECISION UNTIL FEBRUARY 7TH IS THAT DURING JANUARY, IN ADDITION TO PREPARING THE USUAL MONTHLY STATEMENTS, THE COMPANY WAS PREPARING ITS FISCAL YEAR END STATEMENT, TAKING INVENTORY AND PREPARING MATERIAL FOR THE AUDITOR WHO WAS IN THE OFFICE DURING THE LATTER PART OF JANUARY. IN VIEW OF THE INCREASED WORK HE FELT IT WOULD BE UNFAIR TO THE OTHER MEMBERS OF MANAGEMENT TO REQUIRE THEM TO TRAIN NEW STAFF AT THAT TIME. UPON RECEIVING THE COMPLETED YEAR END STATEMENT ON FEBRUARY 6TH, HOWEVER, HE DECIDED TO ACT ON HIS EARLIER DECISION AND TERMINATED THEIR EMPLOYMENT ON FEBRUARY 7TH. THERE IS ALSO EVIDENCE THAT ON FEBRUARY 4TH HASSELL ASKED BROWN TO PREPARE A PARTICULAR ACCOUNT WITH RESPECT TO WHICH THERE WAS CONSIDERABLE URGENCY. BROWN UNDERTOOK TO HAVE IT READY BY FEBRUARY 6TH. IT WAS STILL NOT AVAILABLE, HOWEVER, ON FEBRUARY 7TH.

BROWN TESTIFIED THAT HE AND ANOTHER EMPLOYEE STEVEN VAN LEUVENS HAD APPROACHED THE COMPLAINANT UNION WITH REGARD TO ORGANIZING THE OFFICE STAFF. A MEETING HELD AT A PRIVATE RESIDENCE ON THE EVENING OF FEBRUARY 4TH WAS ATTENDED BY BROWN, ANDERSON, VAN LEUVENS, TWO OTHER OFFICE EMPLOYEES AND TO REPRESENTATIVES OF THE UNION. ON THAT OCCASION, THE THREE NAMED EMPLOYEES JOINED THE UNION. ON FEBRUARY 5TH AND 6TH BROWN APPROACHED THE OTHER EMPLOYEES ON THE OFFICE STAFF AND SIGNED UP SOME OF THEM IN THE UNION. ANDERSON TESTIFIED THAT DURING HER LUNCH PERIOD ON FEBRUARY 5TH SHE DECLARED THAT SHE WAS A SUPPORTER OF THE UNION IN THE PRESENCE OF OTHER EMPLOYEES. RIDER DENIES HAVING ANY KNOWLEDGE OF UNION ACTIVITIES ON THE PART OF BROWN OR ANDERSON PRIOR TO THEIR DISCHARGE. HASSELL'S EVIDENCE IS THAT WHILE HE HEARD RUMOURS OF A UNION ORGANIZATION HE WAS UNAWARE OF ANY UNION ACTIVITY BY BROWN OR ANDERSON.

THERE IS NO EVIDENCE BEFORE US THAT ANY MEMBER OF MANAGEMENT HAD KNOWLEDGE THAT BROWN OR ANDERSON WAS A MEMBER OF THE UNION OR ACTIVE IN THE ORGANIZING CAMPAIGN. WHILE THE BOARD IS FULLY COGNIZANT OF THE PROXIMITY OF THE PERIOD OF UNION ORGANIZATION AND THE DISCHARGE OF THE AGGRIEVED PERSONS, HAVING REGARD TO THE EVIDENCE RELATING TO THEIR WORK RECORD IN THE ACCOUNTS PAYABLE SECTION, WE DO NOT FIND THAT THEIR DISCHARGE WAS RELATED TO UNION ACTIVITIES. WE WOULD MENTION THAT STEVEN VAN LEUVENS, WHO WAS ALSO ONE OF THE ORIGINAL EMPLOYEES TO JOIN THE UNION, AND WHO SIGNED UP ANOTHER EMPLOYEE, REMAINED IN THE EMPLOY OF THE COMPANY UNTIL HE TERMINATED HIS EMPLOYMENT OF HIS OWN VOLITION IN MARCH. IN OUR OPINION, BROWN AND ANDERSON WERE DISCHARGED BY HASSELL ON FEBRUARY 7TH BECAUSE THEY FAILED TO FULFIL THEIR JOB FUNCTIONS TO THE SATISFACTION OF THE COMPANY.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED.."

BOARD MEMBER D. M. STOREY DISSENTED AND SAID:-

"I DISSENT. THE PROXIMITY OF THE PERIOD OF UNION ORGANIZATION AND THE DISCHARGE OF THE AGGRIEVED PERSONS IS SUCH THAT THERE IS NO DOUBT IN MY MIND THAT THE AGGRIEVED PERSONS WERE FIRED FOR UNION ACTIVITY. THIS IS PARTICULARLY CLEAR IN THE CASE OF ANDERSON WHO MADE IT KNOWN IN NO UNCERTAIN TERMS AROUND THE OFFICE THAT SHE WAS AN AVID UNION SUPPORTER. IN AN OFFICE OF THIS SIZE THERE CAN BE LITTLE DOUBT THAT MANAGEMENT KNEW OF HER ACTIVITIES, AND IN FACT HASSELL ADMITTED HE HAD HEARD OF THE UNION ORGANIZING DRIVE.

BROWN MAY HAVE BEEN RESPONSIBLE TO SOME DEGREE FOR THE WORK BEING BEHIND, BUT THERE WAS OBVIOUSLY OTHER FACTORS WHICH ENTERED INTO THIS.

WHILE THERE IS A CONFLICT BETWEEN ANDERSONS'S EVIDENCE AND THAT OF RIDER, I ACCEPT HER TESTIMONY THAT SHE HAD NEVER BEEN REPRIMANDED OR INFORMED OF THE COMPANY'S DISSATISFACTION WITH HER WORK.

IN THE OPINION OF THIS BOARD MEMBER THE CHARGE OF BAD WORK WAS MEANT AS A COVER UP FOR THE REAL REASON FOR THE DISCHARGE.

I WOULD HAVE FOUND THE AGGRIEVED PERSONS WERE DISCHARGED FOR UNION ACTIVITY AND REINSTATED THEM WITH COMPENSATION."

7962-63-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. CANADA DRY LIMITED (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON SAM KYRIACOPOULOS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT ROY LOCKYER, THE OPERATIONS MANAGER OF THE RESPONDENT, DISCHARGED KYRIACOPOULOS ON FEBRUARY 12TH, 1964 BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION.

KYRIACOPOULOS ON THE DATE OF HIS DISCHARGE WAS IN CHARGE OF OPERATIONS OF THE SYRUP ROOM IN THE RESPONDENT'S PLANT. THREE OTHER EMPLOYEES WORKED UNDER HIS DIRECTION IN THE SYRUP ROOM. HE HAD HELD THE SAME POSITION SINCE OCTOBER OF 1961. KYRIACOPOULOS' EVIDENCE IS THAT AT APPROXIMATELY 12:30 P.M. ON FEBRUARY 12TH HE WAS TAKEN TO THE OFFICE OF LOCKYER BY CARL SMITH THE PLANT MANAGER. LOCKYER COMPLAINED TO HIM ABOUT LOSSES OF GINGERALE SYRUP. HE FURTHER TOLD KYRIACOPOULOS THAT THE COMPANY WAS NOT SATISFIED WITH HIS WORK AND THAT HE WAS BEING REPLACED. KYRIACOPOULOS REPLIED THAT THERE WAS SOMETHING ELSE IN HIS (LOCKYER'S) MIND AND THAT THE SYRUP LOSSES WERE NOT THE REASON FOR HIS DISCHARGE. LOCKYER'S ANSWER WAS THAT IF KYRIACOPOULOS CHANGED HIS MIND AND SIGNED A PIECE OF PAPER AGAINST THE UNION HE COULD HAVE HIS JOB BACK. ACCORDING TO KYRIACOPOULOS, LOCKYER HAD A PIECE OF PAPER IN HIS HAND. HE ADMITTED,

HOWEVER, THAT HE DID NOT SEE WHAT WAS WRITTEN ON THE PAPER. KYRIACOPOULOS DENIED TO LOCKYER THAT HE HAD SIGNED ANYTHING FOR THE UNION BUT STATED THAT HE WOULD NOT SIGN AGAINST THE UNION. AT THAT POINT, LOCKYER HANDED KYRIACOPOULOS HIS CHEQUE AND UNEMPLOYMENT INSURANCE BOOK AND IN BLUNT TERMS TOLD HIM TO GO HOME.

THE EVIDENCE OF LOCKYER CONCERNING HIS DISCUSSION WITH KYRIACOPOULOS ON FEBRUARY 12TH IS THAT HE ASKED SMITH TO BRING KYRIACOPOULOS TO HIS (LOCKYER'S) OFFICE. LOCKYER EXPLAINED HE HAD IN HIS POSSESSION A SHEET OF PAPER WHICH CONTAINED A RECORD OF THE GINGERALE SYRUP PRODUCTION OVER THE PREVIOUS YEAR, WHICH HE OFFERED TO KYRIACOPOULOS. HE TOLD KYRIACOPOULOS THAT UNLESS HE COULD PROVIDE AN EXPLANATION FOR THE LOSSES, HE (LOCKYER) WOULD HAVE TO TERMINATE HIS EMPLOYMENT. KYRIACOPOULOS DID NOT LOOK AT THE SHEET BUT REPLIED THAT IF THERE WERE LOSSES HE DID NOT KNOW ANYTHING ABOUT THEM. LOCKYER DENIED THAT HE HAD EITHER ASKED KYRIACOPOULOS WHETHER HE WAS A UNION MEMBER OR ASKED HIM TO SIGN A PETITION AGAINST THE UNION. MOREOVER, HE DENIED THAT HE HAD RUDELY TOLD KYRIACOPOULOS TO GO HOME. THE EVIDENCE OF SMITH WHO WAS PRESENT DURING THE CONVERSATION ESSENTIALLY CORROBORATES LOCKYER'S TESTIMONY.

THERE IS EVIDENCE BASED ON RECORDS OF THE RESPONDENT COMPANY WHICH SHOWS THAT FOR THE MONTHS OF SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER OF 1963 AND THE MONTH OF JANUARY 1964, THERE WERE SIGNIFICANT LOSSES OF GINGERALE SYRUP. THE EVIDENCE OF DENNIS BOUROUKIS, THE SUPERINTENDENT OF THE BOTTLING QUALITY CONTROL, S. WARN, THE COMPTROLLER, AND CARL SMITH IS THAT USUALLY THERE WAS AN OVERAGE IN THE PRODUCTION OF GINGERALE SYRUP. THEY FURTHER TESTIFIED THAT PREVIOUSLY THERE HAD NEVER BEEN LOSSES OF THE MAGNITUDE EXPERIENCED DURING THE FIVE MONTH PERIOD FROM SEPTEMBER 1963 TO JANUARY 1964. BOUROUKIS TESTIFIED THAT DALTON THE OFFICE MANAGER SPOKE TO HIM IN EARLY OCTOBER REGARDING THE SEPTEMBER SYRUP LOSSES. BOUROUKIS IN TURN SPOKE TO KYRIACOPOULOS ABOUT THE LOSSES. KYRIACOPOULOS ORIGINALLY TESTIFIED THAT HE HAD NEVER BEEN CRITICIZED OR REPRIMANDED BY ANY MEMBER OF MANAGEMENT WITH RESPECT TO HIS JOB FUNCTIONS. HE ADMITTED IN CROSS-EXAMINATION, HOWEVER, THAT BOUROUKIS ON ONE OCCASION HAD SPOKEN TO HIM ABOUT SYRUP LOSSES BUT LATER INFORMED HIM THAT A MISTAKE HAD BEEN MADE IN THE OFFICE. BOUROUKIS DENIED THAT HE HAD EVER TOLD KYRIACOPOULOS THAT A MISTAKE HAD BEEN MADE IN THE OFFICE. BOUROUKIS TESTIFIED THAT HE ALSO SPOKE TO KYRIACOPOULOS CONCERNING THE SYRUP LOSSES FOR THE MONTH OF OCTOBER AND AGAIN ON FEBRUARY 10TH. SMITH TESTIFIED THAT HE HELD A MEETING IN MID-JANUARY ATTENDED BY BOUROUKIS, KYRIACOPOULOS AND THE THREE OTHER EMPLOYEES WORKING IN THE SYRUP ROOM. ON THAT OCCASION HE ASKED THOSE PRESENT FOR AN EXPLANATION OF THE SYRUP LOSSES. NO EXPLANATION WAS FORTHCOMING. HE ALSO DISCUSSED AN UNFAVOURABLE REPORT FROM THE HEALTH DEPARTMENT CONCERNING THE CLEANLINESS OF THE SYRUP ROOM AS WELL AS MATTERS RELATING TO THE SCHEDULING OF SHIFTS TO ACCOMMODATE EMPLOYEES TAKING NIGHT COURSES. IN CROSS-EXAMINATION KYRIACOPOULOS STATED THAT HE HAD ATTENDED THE MEETING IN SMITH'S OFFICE BUT SAID THAT THE ONLY DISCUSSION WAS WITH RESPECT TO THE SCHEDULING OF SHIFTS. BOUROUKI'S EVIDENCE IS THAT THE ONLY TOPIC UNDER DISCUSSION AT THE MEETING WAS THE SYRUP LOSSES. KYRIACOPOULOS SPECIFICALLY DENIED THAT HE HAD EVER BEEN SPOKEN TO ABOUT THE CLEANLINESS OF THE SYRUP ROOM. HE FURTHER TESTIFIED THAT HE WAS UNAWARE



OF ANY INSPECTION OF THE SYRUP ROOM BY INSPECTORS FROM THE DEPARTMENT OF HEALTH.

DESPITE INVESTIGATIONS BY BOUROUKIS AND SMITH, THE RESPONDENT WAS UNABLE TO FIND AN EXPLANATION FOR THE CONTINUING SYRUP LOSSES. SMITH TESTIFIED THAT HE HAD A REPORT MADE OF THE GINGERALE SYRUP PRODUCTION FOR THE FIRST WEEK IN FEBRUARY WHICH SHOWED A SUBSTANTIAL LOSS. AT THE END OF THAT WEEK THE SYRUP ROOM OPERATIONS WERE SHUT DOWN FOR REPAIRS. AT THAT TIME HE INFORMED LOCKYER THAT CHANGES IN PERSONNEL HAD TO BE MADE IN THE SYRUP ROOM BEFORE THE RECOMMENCEMENT OF OPERATIONS. LOCKYER ASKED SMITH TO BRING KYRIACOPOULOS TO HIS OFFICE ON FEBRUARY 12TH, AT WHICH TIME KYRIACOPOULOS WAS DISCHARGED.

KYRIACOPOULOS TESTIFIED THAT HE JOINED THE COMPLAINANT UNION IN THE LATTER PART OF JANUARY AND WAS ELECTED CHAIRMAN OF THE ORGANIZING COMMITTEE. HE ALSO TESTIFIED THAT ON FEBRUARY 11TH HE WAS APPROACHED BY BOUROUKIS AND ASKED WHETHER HE HAD SIGNED A UNION CARD TO WHICH KYRIACOPOULOS HAD REPLIED IN THE NEGATIVE. BOUROUKIS DENIED HAVING ASKED KYRIACOPOULOS WHETHER HE HAD SIGNED A UNION CARD.

THERE IS NO EVIDENCE THAT ANY MEMBER OF MANAGEMENT HAD ANY KNOWLEDGE OF KYRIACOPOULOS' UNION ACTIVITIES. EVEN IF WE ACCEPT KYRIACOPOULOS' EVIDENCE, HIS TESTIMONY IS THAT HE TOLD BOTH BOUROUKIS AND LOCKYER THAT HE WAS NOT A MEMBER OF THE UNION. WHILE THE LOSS OF GINGERALE SYRUP IS NOT DISPUTED, THERE IS CONSIDERABLE CONFLICT IN THE EVIDENCE OF KYRIACOPOULOS AND THE EVIDENCE OF THE WITNESSES CALLED BY THE RESPONDENT. HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE SYRUP LOSSES AND THE EVIDENCE RELATING TO THE CLEANLINESS OF THE SYRUP ROOM, WE DO NOT ACCEPT KYRIACOPOULOS' EVIDENCE THAT NO ONE SPOKE TO HIM AT ANY TIME ABOUT THESE MATTERS. HAVING REJECTED THIS PORTION OF HIS EVIDENCE, DOUBT IS NECESSARILY CAST ON THE VERACITY OF ALL OF HIS TESTIMONY. AS BETWEEN THE EVIDENCE OF KYRIACOPOULOS ON THE ONE HAND AND THE EVIDENCE OF SMITH AND LOCKYER ON THE OTHER AS TO THE CONVERSATION THAT TOOK PLACE AT THE TIME OF HIS DISCHARGE, WE ACCEPT THE EVIDENCE OF SMITH AND LOCKYER.

WE WOULD MENTION THAT BOUROUKIS, SMITH AND LOCKYER ALL TESTIFIED THAT NO EXPLANATION WAS FOUND FOR THE SYRUP LOSSES. SMITH AND LOCKYER TESTIFIED, HOWEVER, THAT IN THE CIRCUMSTANCES OF THE CONTINUING SYRUP LOSSES, THEY FELT THAT THEY HAD NO ALTERNATIVE BUT TO DISCHARGE KYRIACOPOULOS. THE BOARD IS NOT CALLED UPON TO MAKE ANY FINDINGS AS TO WHETHER THIS ACTION WAS JUSTIFIED. WE WOULD POINT OUT, NEVERTHELESS, THAT THE EVIDENCE INDICATES THAT AFTER THE REPLACEMENT OF KYRIACOPOULOS AND THE OTHER EMPLOYEES IN THE SYRUP ROOM THERE CEASED TO BE GINGERALE SYRUP LOSSES.

HAVING REGARD TO ALL THE EVIDENCE, THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT KYRIACOPOULOS' DISCHARGE WAS



IN ANY WAY RELATED TO HIS UNION ACTIVITIES.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED."

8054-63-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CORCORAN FOODS LIMITED (RESPONDENT)

(SEE INDEXED ENDORSEMENT PAGE 94 )

8208-63-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (COMPLAINANT) V. LUKAS HOTEL COMPANY LTD. (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON DONALD DESMARAIS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT DESMARAIS WAS DISCHARGED BY LAWRENCE LUKAS THE MANAGER OF THE RESPONDENT HOTEL ON THE AFTERNOON OF MARCH 20TH, 1964 BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION.

DESMARAIS WAS EMPLOYED AS A PART-TIME WAITER IN THE BEVERAGE ROOMS OF THE RESPONDENT HOTEL AT THE TIME OF HIS DISCHARGE ON MARCH 20TH. HE TESTIFIED THAT HE WAS ACTIVE IN ORGANIZING EMPLOYEES OF THE RESPONDENT ON BEHALF OF THE COMPLAINANT UNION DURING THE MONTH OF FEBRUARY. THERE IS EVIDENCE OF A CONVERSATION BETWEEN DESMARAIS AND LUKAS SOME TIME IN LATE FEBRUARY OR EARLY MARCH AT WHICH TIME DESMARAIS' HOURS OF WORK WERE REDUCED FROM THAT OF A FULL-TIME TO A PART-TIME WAITER. ACCORDING TO DESMARAIS A DISCUSSION TOOK PLACE ON THAT OCCASION WITH RESPECT TO THE UNION COMING INTO THE HOTEL AND THAT IMMEDIATELY FOLLOWING THE DISCUSSION LUKAS REDUCED HIS HOURS OF WORK. LUKAS DENIED THAT THERE WAS ANY CONVERSATION WITH REGARD TO THE UNION AND THAT HE INFORMED DESMARAIS THAT HIS HOURS OF WORK WERE BEING REDUCED BECAUSE OF A SLACKNESS IN BUSINESS. LUKAS FURTHER TESTIFIED THAT DESMARAIS HAD SUGGESTED THAT HIS HOURS BE REDUCED SO THAT HIS BROTHER-IN-LAW WHO WAS A PART-TIME WAITER WOULD NOT BE LAID-OFF. LUKAS AGREED TO THE SUGGESTION. LUKAS ALSO TESTIFIED THAT AT THE TIME OF THE DISCUSSION HE DID NOT KNOW THAT DESMARAIS WAS A MEMBER OF THE UNION.

THE INCIDENT WHICH LED TO THE DISCHARGE OF DESMARAIS OCCURRED AT APPROXIMATELY 12:30 A.M. ON THE MORNING OF MARCH 20TH. THE EVIDENCE IS THAT FOLLOWING THE CLOSING OF THE BEVERAGE ROOMS AT MIDNIGHT DESMARAIS WANTED TO BUY A DRAUGHT BEER. LUKAS INFORMED HIM THAT HE HAD ALREADY SHUT OFF THE BEER LINES. THE EVIDENCE OF DESMARAIS IS THAT HE THEN ASKED FOR A BOTTLE OF BEER BUT NOTICED THAT THE COOLER ALSO HAD BEEN LOCKED. DESMARAIS ENQUIRED WHY THE DRAUGHT BEER HAD BEEN CUT OFF SO SOON TO WHICH LUKAS REPLIED, "YOU AND YOUR--UNION WON'T RUN MY HOTEL". THE EVIDENCE OF LUKAS IS THAT AFTER TELLING DESMARAIS THAT HE HAD CLOSED DOWN THE DRAUGHT LINES HE OFFERED DESMARAIS A BOTTLE OF BEER, UNLOCKED THE COOLER AND PLACED A BEER ON THE BAR. AT

THAT POINT DESMARAIS MADE A HIGHLY DISRESPECTFUL REMARK TO LUKAS WHICH RESULTED IN A HEATED EXCHANGE OF WORDS. DESMARAIS THEN TOLD LUKAS THAT IF HE WAS GOING TO BE SO SMALL (REFERRING TO THE CLOSING OF THE LINES) HE WAS GOING TO TELL THE UNION TO ASK FOR \$1.50 AN HOUR INSTEAD OF \$1.25. LUKAS TESTIFIED THAT HE REPLIED, "I COULDN'T CARE LESS IF YOU ASKED FOR \$2.00 AN HOUR. YOU STILL ARE NOT GOING TO TELL ME WHAT I CAN OR CANNOT DO." DESMARAIS ADMITTED IN CROSS-EXAMINATION THAT HE HAD MADE THE DISRESPECTFUL REMARK CONCERNING THE BOTTLE OF BEER.

THERE IS A CONFLICT IN MUCH OF THE TESTIMONY OF DESMARAIS AND LUKAS. HAVING REGARD TO THE Demeanour OF THE TWO WITNESSES, THE BOARD PLACES GREATER RELIANCE ON THE TESTIMONY OF LUKAS. THERE IS, HOWEVER, SUBSTANTIAL AGREEMENT IN THEIR EVIDENCE WITH RESPECT TO THE CIRCUMSTANCES THAT LED TO THE VERBAL EXCHANGE BETWEEN THEM IN THE EARLY MORNING OF MARCH 20TH. FURTHER, THERE IS NO DISPUTE THAT DESMARAIS MADE THE DISRESPECTFUL REMARK WHICH LUKAS TESTIFIED WAS THE REASON HE DISCHARGED DESMARAIS LATER THAT DAY. THERE IS ALSO NO DISPUTE THAT AT THE TIME OF THE INCIDENT ON MARCH 20TH LUKAS KNEW THAT DESMARAIS WAS A MEMBER OF THE UNION. LUKAS TESTIFIED THAT THE UNION HAD BEEN CERTIFIED BY THE BOARD A COUPLE OF WEEKS PRIOR TO THE INCIDENT AND TO HIS KNOWLEDGE ALL THE WAITERS WERE UNION MEMBERS.

HAVING CONSIDERED ALL THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT DESMARAIS WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT. WE FIND RATHER THAT DESMARAIS WAS DISCHARGED BY LUKAS BECAUSE OF HIS DISRESPECTFUL AND INSUBORDINATE BEHAVIOUR TO HIS EMPLOYER.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED."

8225-64-U: TORONTO TYPOGRAPHICAL UNION, No. 91, I.T.U. (COMPLAINANT) v. DAISONS PRESS LIMITED. (RESPONDENT)

8252-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. PAPISTAN OF CANADA LIMITED. (RESPONDENT)

8354-64-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (COMPLAINANT) v. KAYSON PLASTIC CHEMICALS LIMITED (RESPONDENT)

8380-64-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) v. McNAMARA CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT)

8420-64-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (COMPLAINANT) v. TWEED VENEERS LIMITED (RESPONDENT)

8458-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) v. CRONIN'S LIMITED (RESPONDENT)

8463-64-U: UNITED RUBBER CORK LINOLEUM & PLASTIC WORKERS OF AMERICA (COMPLAINANT) v. GLENN S. WOOLLEY & CO. LTD. (RESPONDENT)

APPLICATION FOR RECONSIDERATION OF BOARD DECISION - CERTIFICATION

8159-63-R: SPORTSWEAR LOCAL 199, INTERNATIONAL LADIES GARMENT WORKERS' UNION  
(APPLICANT) SUMMITT SPORTSWEAR (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT, PURSUANT TO SECTION 79 (1) OF THE LABOUR RELATIONS ACT, REQUESTS THE BOARD TO RECONSIDER ITS DECISION OF APRIL 15TH, 1964, WHEREIN IT DISMISSED THE APPLICATION FOR CERTIFICATION OF THE APPLICANT. IN SUPPORT OF ITS REQUEST THE APPLICANT SUBMITS THAT THE BOARD ERRED IN THE FOLLOWING PARTICULARS:

THE APPLICANT SUBMITS THAT THE BOARD ACCEPTED ORAL REPRESENTATIONS OF FACT MADE BY COUNSEL FOR THE RESPONDENT, ALTHOUGH THOSE REPRESENTATIONS WERE CONTRADICTED BY COUNSEL FOR THE APPLICANT. HAVING CAREFULLY REVIEWED ALL THE EVIDENCE, THE BOARD FINDS THAT THERE WAS NO CONTRADICTION BY COUNSEL FOR THE APPLICANT OF ANY REPRESENTATIONS OF FACT MADE BY COUNSEL FOR THE RESPONDENT WHICH WERE MATERIAL TO THE BOARD'S DETERMINATION OF THE APPROPRIATE BARGAINING UNIT.

THE APPLICANT SUBMITS THAT THE BOARD FOUNDED ITS DECISION UPON REPRESENTATIONS OF FACT MADE BY COUNSEL FOR THE RESPONDENT WHICH WERE SUPPORTED BY NO EVIDENCE WHATSOEVER. THE BOARD, FOLLOWING ITS USUAL PROCEDURE, CALLED ON COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT TO MAKE THEIR REPRESENTATIONS AS TO THE APPROPRIATE BARGAINING UNIT AND THE MATERIAL FACTS WITH RESPECT TO THE RESPONDENT COMPANY'S OPERATIONS UPON WHICH THEY RELIED. AT THE HEARING BEFORE THE BOARD ON APRIL 13TH, 1964, COUNSEL FOR THE APPLICANT NEITHER OBJECTED TO THIS PROCEDURE NOR REQUESTED THAT COUNSEL FOR THE RESPONDENT BE REQUIRED TO ADDUCE EVIDENCE IN SUPPORT OF HIS REPRESENTATIONS OF FACT.

THE APPLICANT SUBMITS THAT THE BOARD, CONTRARY TO ITS ESTABLISHED PRACTICE, GAVE NO WEIGHT WHATEVER TO THE HISTORY AND TRADITION OF COLLECTIVE BARGAINING IN THE INDUSTRY. THE BOARD IN DETERMINING THE APPROPRIATE BARGAINING UNIT GAVE CONSIDERATION TO ALL THE REPRESENTATIONS MADE BY COUNSEL FOR THE APPLICANT.

THE APPLICANT SUBMITS THAT THE BOARD FAILED TO APPOINT AN EXAMINER OR ALTERNATIVELY TO ORDER A VOTE OF THE EMPLOYEES WITH RESPECT TO THE QUESTION OF THE APPROPRIATE BARGAINING UNIT. THERE BEING NO DISAGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE MATERIAL FACTS RELATING TO THE RESPONDENT COMPANY THERE WAS NO REASON FOR THE BOARD TO APPOINT AN EXAMINER. THE BOARD WAS OF THE OPINION THAT IN THE CIRCUMSTANCES OF THIS CASE IT SHOULD NOT EXERCISE ITS DISCRETION UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT AND CONDUCTED A VOTE FOR THE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT (SEE COOPER AND BEATTY LIMITED CASE (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59 ¶16,100, C.L.S. 76-581; HARDING CARPETS LIMITED CASE JULY 1961, MONTHLY REPORT P. 128).

THE APPLICANT SUBMITS THAT THE BOARD ERRED IN FAILING TO FIND THAT COUNSEL FOR THE RESPONDENT WAS ESTOPPED FROM MAKING CERTAIN REPRESENTATIONS WITH RESPECT TO THE OPERATIONS OF THE RESPONDENT AT 74 OSSINGTON AVENUE, BY VIRTUE OF THE PROVISIONS OF THE PARTNERSHIP REGISTRATION ACT 1960 R.S.O. C. 289. IF THERE IS ANY MERIT IN THIS SUBMISSION, COUNSEL FOR THE APPLICANT WAS AFFORDED FULL OPPORTUNITY TO MAKE HIS REPRESENTATIONS WITH RESPECT TO IT AT THE BOARD HEARING. NO REPRESENTATIONS WERE ADVANCED AT THAT TIME. THE BOARD FAILS TO APPRECIATE HOW THIS SUBMISSION COULD IN ANY WAY AFFECT ITS DECISION IN THIS MATTER.

IN ALL THE CIRCUMSTANCES OF THIS CASE THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER ITS DECISION OF APRIL 15TH, 1964. ACCORDINGLY, THE APPLICANT'S REQUEST IS DENIED."

INDEXED ENDORSEMENT - CERTIFICATION

8187-63-R: THE CANADIAN UNION OF OPERATING ENGINEERS. (APPLICANT)  
DAY & CAMPBELL LIMITED (RESPONDENT) CHRISTIAN TRADE UNIONS OF CANADA. (INTERVIEWER)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT APPLIED ON MARCH 26TH, 1964 TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT HAMILTON.

THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT WITH CHRISTIAN TRADE UNIONS OF CANADA, EFFECTIVE FROM JUNE 1ST, 1963 UNTIL DECEMBER 31ST, 1964. ARTICLE 1 OF THE COLLECTIVE AGREEMENT READS IN PART AS FOLLOWS:

"1.01 IN ACCORDANCE WITH THE CERTIFICATION OF THE ONTARIO LABOUR RELATIONS BOARD UNDER THE DATE OF NOVEMBER 24TH, 1959, THE COMPANY AGREES TO RECOGNIZE THE UNION AS THE EXCLUSIVE BARGAINING REPRESENTATIVE OF THE COMPANY'S EMPLOYEES FOR COLLECTIVE BARGAINING PURPOSES WITH RESPECT TO THE RATES OF PAY, HOURS OF WORK AND OTHER CONDITIONS OF EMPLOYMENT.

1.02 IT IS UNDERSTOOD AND AGREED THAT THE BARGAINING UNIT IS CONSTITUTED OF ALL THE EMPLOYEES OF THE COMPANY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."

ARTICLE 3 READS IN PART AS FOLLOWS:

"3.01 THE PARTIES MUTUALLY AGREE THAT AN EMPLOYEE OF THE COMPANY COVERED BY THIS AGREEMENT MAY BECOME A MEMBER OF THE UNION IF HE WISHES TO DO SO AND MAY REFRAIN FROM BECOMING A MEMBER IF HE SO DESIRES."

THE CHRISTIAN TRADE UNIONS OF CANADA FILED AN INTERVENTION DATED APRIL 6TH, 1964, WHICH READS IN PART AS FOLLOWS:



"ON THE 24TH DAY OF NOVEMBER, 1959, THE CHRISTIAN TRADE UNIONS OF CANADA RECEIVED CERTIFICATION FROM THE BOARD AS THE BARGAINING AGENT OF ALL EMPLOYEES OF DAY AND CAMPBELL LIMITED AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF. ALTHOUGH THE GROUP OF EMPLOYEES IN QUESTION HAVE NEVER JOINED THE C.T.U. OF C. NOR HAVE THEY EVER PAID DUES TO THE C.T.U. OF C. FOR COLLECTIVE BARGAINING. WE ARE, HOWEVER, ANXIOUS AND WILLING TO REPRESENT THIS GROUP AS THEIR BARGAINING AGENT."

SUBSEQUENTLY BY LETTER DATED APRIL 10TH, 1964 THE SOLICITORS FOR CHRISTIAN TRADE UNIONS OF CANADA FORMALLY WITHDREW THE INTERVENTION

THE RESPONDENT OPPOSED THIS APPLICATION ON THE BASIS THAT IT IS UNTIMELY.

THE APPLICANT ARGUED THAT THE INTERVENTION IS EVIDENCE OF ABANDONMENT OF THE BARGAINING RIGHTS WITH RESPECT TO THE STATIONARY ENGINEERS AND ACCORDINGLY HAS REQUESTED THE BOARD TO MAKE A FINDING THAT ITS APPLICATION IS TIMELY.

WHILE THERE IS NO SPECIFIC WAGE CLASSIFICATION FOR STATIONARY ENGINEERS UNDER THE TERMS OF THE COLLECTIVE AGREEMENT, STATIONARY ENGINEERS ARE NOT EXCLUDED FROM THE COLLECTIVE AGREEMENT WHICH COVERS ALL EMPLOYEES OF THE RESPONDENT.

WE FIND THAT THE STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT HAMILTON ARE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CHRISTIAN TRADE UNIONS OF CANADA.

STATIONARY ENGINEERS ARE ENTITLED UNDER THE COLLECTIVE AGREEMENT TO AVAIL THEMSELVES OF THE GRIEVANCE PROCEDURE, SICK BENEFITS, HOLIDAY PAY, SENIORITY AND OVERTIME AND OTHER PROVISIONS SET FORTH IN THE COLLECTIVE AGREEMENT. IN ADDITION THE STATIONARY ENGINEERS BENEFITTED UNDER THE GENERAL INCREASES WHICH BECAME EFFECTIVE UNDER THE COLLECTIVE AGREEMENT ON APRIL 1ST, 1963 FOR "ALL EMPLOYEES."

WE FURTHER FIND THAT THERE HAS BEEN NO ABANDONMENT OF THE STATIONARY ENGINEERS BY THE CHRISTIAN TRADE UNIONS OF CANADA.

ASSUMING THAT WE HAD FOUND (ALTHOUGH WE HAVE NOT FOUND) THAT THE INTERVENTION IS EVIDENCE OF AN ATTEMPT BY THE CHRISTIAN TRADE UNIONS OF CANADA TO ABANDON THE BARGAINING RIGHTS WITH RESPECT TO THE STATIONARY ENGINEERS, IN VIEW OF THE PROVISIONS OF ARTICLE 1 OF THE COLLECTIVE AGREEMENT, IT WOULD BE UNTHINKABLE TO PERMIT THE CHRISTIAN TRADE UNIONS OF CANADA TO UNILATERALLY ABANDON ALL OR ANY PART OF ITS BARGAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT DURING THE LIFE TIME OF THE SUBSISTING COLLECTIVE AGREEMENT.

SECTION 32 (1) OF THE LABOUR RELATIONS ACT PROVIDES THAT A TRADE UNION THAT IS A PARTY TO A COLLECTIVE AGREEMENT IS THE



EXCLUSIVE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED THEREIN. THIS MANDATORY PROVISION PROTECTS THE RIGHTS OF BOTH THE TRADE UNION AND THE EMPLOYER WHO ARE PARTIES TO THE COLLECTIVE AGREEMENT. THE TRADE UNION IS PROTECTED AGAINST AN EMPLOYER BARGAINING DIRECTLY WITH HIS EMPLOYEES OR WITH ANOTHER TRADE UNION ON BEHALF OF HIS EMPLOYEES. THE PROTECTION PROVIDED TO AN EMPLOYER BY THIS PROVISION IS THAT HE IS ASSURED THAT HE WILL ONLY HAVE TO DEAL WITH ONE TRADE UNION AS BARGAINING AGENT FOR ALL HIS EMPLOYEES IN THE BARGAINING UNIT DURING THE TERM OF THE COLLECTIVE AGREEMENT. IF ABANDONMENT WERE PERMITTED DURING THE TERM OF A COLLECTIVE AGREEMENT WITHOUT THE CONSENT OF AN EMPLOYER, THE PROTECTION PROVIDED BY SECTION 32 OF THE ACT WOULD BE LOST TO THE EMPLOYER BECAUSE ANOTHER TRADE UNION COULD THEN BECOME THE BARGAINING AGENT OF EMPLOYEES IN THE BARGAINING UNIT.

WE THEREFORE FIND PURSUANT TO THE PROVISIONS OF SECTION 5 (2) OF THE ACT THAT THIS APPLICATION IS UNTIMELY.

BOARD MEMBER D. B. ARCHER DISSENTED AND SAID:-

"I DISAGREE WITH MY COLLEAGUES. I BELIEVE THIS IS A CLEAR CASE OF ABANDONMENT. IN FACT IN MY MIND THIS UNION NEVER PRETENDED TO REPRESENT THE ENGINEERING GROUP. THEY HAVE A UNION SHOP AGREEMENT AND THEY ADMIT THE ENGINEERS HAVE NEVER APPLIED FOR MEMBERSHIP, NEVER PAID DUES AND HAVE NEVER BEEN BARGAINED FOR BY THE CHRISTIAN TRADE UNIONS OF CANADA. IN THESE CIRCUMSTANCES TO INSIST THAT THESE EMPLOYEES BE DENIED REPRESENTATION BY A UNION OF THEIR OWN CHOICE IS A DENIAL OF THE WHOLE MEANING OF THE LABOUR RELATIONS ACT. I WOULD HAVE CERTIFIED THE CANADIAN UNION OF OPERATING ENGINEERS."

8325-64-R CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) AND  
CORNELIS VANDER STELT (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ARTICLE 7 OF THE CONSTITUTION OF THE APPLICANT TRADE UNION CLEARLY ENVISAGES ORGANIZATION OF EMPLOYEES IN THE CONSTRUCTION INDUSTRY. TWO CONSTRUCTION LOCALS HAVE BEEN CONSTITUTED UNDER THE TERMS OF ARTICLE 7 AND BOTH HAVE BEEN CERTIFIED BY THIS BOARD ALTHOUGH NOT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. HOWEVER, ONE OF THE LOCALS (TRENTON CONSTRUCTION WORKERS ASSOCIATION (C.L.A.C.), LOCAL NO. 52) HAS ENTERED INTO TWO COLLECTIVE AGREEMENTS COVERING A UNIT OF CONSTRUCTION WORKERS AND THE OTHER LOCAL (CHATHAM CONSTRUCTION WORKERS ASSOCIATION (C.L.A.C.), LOCAL NO. 53) HAS ENTERED INTO A SIMILAR AGREEMENT. THE APPLICANT UNION (THE PARENT ORGANIZATION) HAS ALSO ENTERED INTO A SIMILAR AGREEMENT. APART FROM THE PRESENT APPLICATION COVERING EMPLOYEES OF AN EMPLOYER OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY, THERE IS ANOTHER APPLICATION PENDING BEFORE THE BOARD BY THE SAME APPLICANT AFFECTING A SIMILAR EMPLOYER.

AS IS THE CASE WITH RESPECT TO LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND

JOINERS OF AMERICA AND THE NATIONAL COUNCIL OF CANADIAN LABOUR (N.C.C.L.), TRADE UNIONS WHICH THE BOARD HAS RECOGNIZED AS FALLING WITHIN THE PROVISIONS OF SECTION 90 (B) OF THE ACT, THE PRESENT APPLICANT ORGANIZES ON INDUSTRIAL LINES IN THE CONSTRUCTION INDUSTRY RATHER THAN ON A CRAFT BASIS.

IN ALL THOSE CIRCUMSTANCES AND AFTER DUE CONSIDERATION, WE HAVE COME TO THE CONCLUSION THAT THE APPLICANT IS A TRADE UNION "THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY" WITHIN THE MEANING OF SECTION 90 (B) OF THE LABOUR RELATIONS ACT.

THE BOARD THEREFORE FINDS FURTHER THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" I DISSENT WITH RESPECT TO THE FINDING OF THE MAJORITY THAT THE APPLICANT IS A TRADE UNION AS DEFINED BY SECTION 90 (B) OF THE LABOUR RELATIONS ACT. IN MY VIEW, IN SO FAR AS THE APPLICANT IS CONCERNED (I AM NOT DEALING HERE WITH THE LOCALS) THERE IS NO INTERNAL ORGANIZATIONAL STRUCTURE WHICH WOULD SUGGEST THAT THE APPLICANT UNION IS ONE PERTAINING TO THE CONSTRUCTION INDUSTRY AS THAT TERM IS USED IN THE ACT. IF THE OTHER UNIONS REFERRED TO BY THE MAJORITY LACK THAT STRUCTURE I WOULD BE PREPARED TO REVIEW THEIR STATUS IN FUTURE APPLICATIONS. WHILE I WOULD CERTIFY THE APPLICANT I WOULD NOT DO SO UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

8368-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 837, HAMILTON, ONTARIO. (APPLICANT) AND THE FRANK LAWRENCE CONSTRUCTION LIMITED. (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN THIS CASE THE RESPONDENT REQUESTS A HEARING ON THE GROUND THAT IT "CONTESTS UNION DEMANDS DUE TO FAILURE TO OBTAIN THE REQUIRED PERCENTAGE OF EMPLOYEES NECESSARY". IN THE FOUNDATION COMPANY OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1963, P. 532, A SIMILAR REASON WAS ADVANCED BY THE COMPANY IN SUPPORT OF ITS REQUEST FOR A HEARING. IN THAT CASE THE BOARD IN DEALING WITH SUCH REQUEST SAID AS FOLLOWS:

"AS TO THE FIRST REASON STATED BY THE RESPONDENT IN SUPPORT OF ITS REQUEST THE BOARD IS UNABLE TO SEE HOW A HEARING WOULD, IN THIS CASE, IN ANY WAY ASSIST THE BOARD IN DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT. THE RESPONDENT DOES NOT MAKE ANY ALLEGATIONS OF IMPROPRIETY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. THE EMPLOYEES OF THE RESPONDENT HAVE NOT FILED ANY STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION PURSUANT TO SECTION 74 OF THE BOARD'S RULES OF PROCEDURE. NO

INTERVENTION HAS BEEN FILED PURSUANT TO RULE 72. THERE IS ON FILE WITH THE BOARD A DULY COMPLETED FORM 60. THE RESPONDENT HAS FILED SCHEDULES LISTING EMPLOYEES IN THE BARGAINING UNIT AND THESE ARE ACCOMPANIED BY SPECIMEN SIGNATURES. THE APPLICANT HAS FILED ITS EVIDENCE OF MEMBERSHIP. IN THESE CIRCUMSTANCES EVEN IF A HEARING WERE HELD ALL THAT WOULD TAKE PLACE WITH RESPECT TO THE MEMBERSHIP POSITION OF THE APPLICANT WOULD BE THE ANNOUNCEMENT OF THE 'COUNT' I.E. THE NUMBER OF CARDS FILED BY THE APPLICANT AND THE NUMBER OF PERSONS ON THE SCHEDULES FILED BY THE RESPONDENT. THE BOARD DOES NOT REVEAL WHO ARE UNION MEMBERS. IT MAKES ITS FINDINGS WITH RESPECT TO THE MEMBERSHIP POSITION OF THE APPLICANT FROM THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT AND THE LIST OF EMPLOYEES AND SPECIMEN SIGNATURES FILED BY THE RESPONDENT. (SEE SECTION 83 OF THE LABOUR RELATIONS ACT).. IF NO HEARING IS HELD IN A CASE THE COUNT IS ANNOUNCED IN THE BOARD'S ENDORSEMENT ON THE RECORD. IF THE BOARD HAS ERRED IN SOME MATERIAL WAY A PARTY HAS THE RIGHT TO ASK THE BOARD TO RECONSIDER ITS DECISION UNDER SECTION 79 (1) OF THE LABOUR RELATIONS ACT."

APART FROM THE FACT THAT IN THIS CASE THE RESPONDENT COMPANY HAS NOT FILED SPECIMEN SIGNATURES, THE FACTS IN THIS CASE ARE IDENTICAL WITH THOSE IN THE FOUNDATION COMPANY CASE AS SET OUT IN THE REASONS OF THE BOARD. IN THESE CIRCUMSTANCES AND FOR THE REASONS OUTLINED IN THE FOUNDATION COMPANY CASE, THE REQUEST FOR A HEARING BY THE PRESENT RESPONDENT IS REJECTED."

INDEXED ENDORSEMENT - TERMINATION

6965-63-R: JAMES ROBINSON (APPLICANT) V. OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 131, AFL-CIO (RESPONDENT) V. DUNLOP CANADA LIMITED (INTERVENER).  
(GRANTED)

(RE: DUNLOP CANADA LIMITED  
WHITBY, ONTARIO).

ON FEBRUARY 10TH, 1964, THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

ON SEPTEMBER 19TH, 1963 IN A SIMILAR APPLICATION MADE BY A DIFFERENT APPLICANT ON BEHALF OF THE SAME GROUP OF EMPLOYEES, THE BOARD DIFFERENTLY CONSTITUTED, GRANTED THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW.

AT THE HEARING IN THE INSTANT CASE, THE RESPONDENT ADVISED THE BOARD THAT IT DID NOT REQUEST THE BOARD TO REVIEW ITS DECISION IN THE FIRST APPLICATION REFERRED TO ABOVE.

IN THE INSTANT CASE, THE RESPONDENT OBJECTED TO THE TIMELINESS OF THIS APPLICATION AND RELYING ON THE TRINIDAD LEASEHOLDS (CANADA) LIMITED CASE, C. C. H. CANADIAN LABOUR LAW REPORTER, 1949-54, ¶17,005, REQUESTED THE BOARD TO DISMISS THIS APPLICATION AND IMPOSE A BAR WITH RESPECT TO FUTURE APPLICATIONS IN ORDER TO PRESERVE THE ACTIVE COLLECTIVE BARGAINING RELATIONSHIP WHICH EXISTED BETWEEN THE RESPONDENT UNION AND THE INTERVENER COMPANY.

THE BOARD'S JURISDICTION TO ENTERTAIN THE RESPONDENT'S REQUEST IS FOUND IN SECTION 77 (2) (1) OF THE ACT WHICH READS IN PART AS FOLLOWS:

"TO BAR AN UNSUCCESSFUL APPLICANT FOR ANY PERIOD NOT EXCEEDING TWO MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION, OR TO REFUSE TO ENTERTAIN A NEW APPLICATION, BY AN UNSUCCESSFUL APPLICANT OR BY ANY OF THE EMPLOYEES AFFECTED BY AN UNSUCCESSFUL APPLICATION OR BY ANY PERSON OR TRADE UNION REPRESENTING SUCH EMPLOYEES WITHIN ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION."  
(EMPHASIS ADDED)

IN ORDER TO AVAIL ITSELF OF THE PROTECTION REQUESTED, THE RESPONDENT MUST SHOW THAT ALL THE PROVISIONS OF SECTION 77 (2) (1) HAVE BEEN COMPLIED WITH.

ASSUMING, FOR PRESENT PURPOSES, THAT THE FIRST APPLICATION CAN BE DESCRIBED AS AN UNSUCCESSFUL APPLICATION, WE MUST NEVERTHELESS LOOK TO THE CONCLUDING WORDS OF THE ABOVE QUOTED SUBSECTION WHICH READ "FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION". THESE WORDS BEING UNAMBIGUOUS, MUST BE READ IN THEIR LITERAL SENSE. IT THEREFORE FOLLOWS THAT THE BOARD CAN ONLY "REFUSE TO ENTERTAIN A NEW APPLICATION...WITHIN ANY PERIOD NOT EXCEEDING TWO MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION". THESE WORDS CLEARLY CONTEMPLATE THAT THERE BE A DISMISSAL OF THE FIRST APPLICATION.

THERE BEING NO "DISMISSAL" OF THE FIRST APPLICATION, ONE OF THE ESSENTIAL ELEMENTS WHICH WOULD GIVE THE BOARD JURISDICTION TO REFUSE TO ENTERTAIN THE PRESENT APPLICATION IS THEREFORE MISSING AND THE RESPONDENT'S OBJECTION TO THE TIMELINESS OF THE PRESENT APPLICATION IS ACCORDINGLY DISMISSED."

BOARD MEMBER D. M. STOREY DISSENTED AND SAID:

"I DISSENT. HAVING REGARD TO THE EVENTS WHICH PRECEDED THIS APPLICATION, AND IN ORDER TO PRESERVE THE ACTIVE BARGAINING RELATIONSHIP WHICH EXISTS BETWEEN THE RESPONDENT AND THE INTERVENER FOR THE REASONS GIVEN IN THE TRINIDAD LEASEHOLDS (CANADA) LIMITED CASE I WOULD HAVE FOUND THIS APPLICATION TO BE UNTIMELY AND WOULD HAVE DISMISSED THIS APPLICATION."



ON MARCH 24, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED FEBRUARY 10TH, 1964 IN THIS MATTER, WHEREIN THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN OF ALL OFFICE EMPLOYEES OF THE INTERVENOR ON THE APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS MADE BY THE APPLICANT JAMES W. ROBINSON HEREIN.

THE APPLICATION WAS MADE ON SEPTEMBER 25TH, 1963. IT CAME ON FOR HEARING IN THE FIRST INSTANCE ON OCTOBER 9TH, 1963. AT THAT HEARING JAMES W. ROBINSON, THE PERSON NAMED AS APPLICANT IN THIS PROCEEDING TESTIFIED THAT HE HAD BEEN AN EMPLOYEE OF THE INTERVENOR ON SEPTEMBER 25TH, 1963, THE DATE THIS APPLICATION WAS MADE, AND THAT HE HAD LEFT THE EMPLOYMENT OF THE COMPANY ON OR ABOUT OCTOBER 1ST, 1963. HOWEVER, THE REPRESENTATIVE OF THE RESPONDENT DID NOT RAISE BEFORE THE BOARD AT THAT HEARING ANY OBJECTION, SUCH AS SHE NOW DOES, THAT ROBINSON HAVING CEASED TO BE AN EMPLOYEE OF THE INTERVENOR LOST HIS STATUS AS AN APPLICANT AND THAT THE APPLICATION SHOULD BE DISMISSED.

THE BOARD'S DECISION IN THIS MATTER, WHICH WAS EVENTUALLY MADE ON FEBRUARY 10TH, 1964 WAS DELAYED PENDING THE DISPOSITION OF THE RESPONDENT'S REQUEST FOR A REVIEW OF AN EARLIER APPLICATION INVOLVING THE SAME GROUP OF EMPLOYEES.

THE RESPONDENT HAS RAISED THE ISSUE WITH RESPECT TO THE STATUS OF THE PRESENT APPLICANT MORE THAN FOUR MONTHS AFTER THE FIRST HEARING IN THIS CASE AT WHICH ALL THE FACTS UPON WHICH THE RESPONDENT NOW RELIES WERE DIVULGED BY THE APPLICANT.

EVEN ASSUMING THAT THE POSITION OF THE RESPONDENT WITH RESPECT TO THE STATUS OF MR. ROBINSON IS WELL TAKEN, NEVERTHELESS THE RESPONDENT'S REQUEST THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER MUST BE DENIED. ALL THE EVIDENCE ON WHICH THE RESPONDENT RELIES WAS KNOWN TO THE RESPONDENT AT THE TIME OF THE FIRST HEARING IN THIS MATTER ON OCTOBER 9TH, 1963 AND ALL THE ARGUMENTS PRESENTLY MADE BY THE RESPONDENT WERE AVAILABLE TO IT AT THAT TIME.

TO GRANT WHAT THE RESPONDENT ASKS IN THIS CASE WOULD CREATE A SITUATION WHERE THE BOARD WOULD BE INVOLVED IN NEVER ENDING HEARINGS TO CONSIDER AND RECONSIDER THE SAME EVIDENCE FROM VARYING VIEW POINTS AS MAY APPEAR PROPITIOUS TO A PARTY FROM TIME TO TIME. IT IS TO THE ADVANTAGE OF ALL PARTIES APPEARING BEFORE THIS BOARD THAT THERE BE SOME MEASURE OF FINALITY TO PROCEEDINGS BEFORE IT. ONCE A DECISION IS MADE ON THE EVIDENCE, AFTER THE PARTIES HAVE HAD FULL OPPORTUNITY TO MAKE THEIR REPRESENTATIONS AND ARGUMENTS WITH RESPECT TO SUCH EVIDENCE, THE PARTY THAT OBTAINS THE DECISION IS ENTITLED NOT TO BE DEPRIVED OF IT SOLELY BECAUSE THE OPPOSING PARTY DECIDES THAT IT SHOULD HAVE MADE A DIFFERENT ARGUMENT. FOR THESE REASONS AND FOR THE REASONS GIVEN BY THE BOARD IN THE DETROIT RIVER CONSTRUCTION LIMITED CASE, C.C.H. CANADIAN LABOUR LAW R. PORTS #16260, THE RESPONDENT'S REQUEST IS DENIED.

ALTHOUGH THE RESPONDENT'S REQUEST WOULD BE DISPOSED OF ON THE GROUND SET OUT ABOVE, THE POINT RAISED BY THE RESPONDENT IS OF



SUFFICIENT SIGNIFICANCE TO WARRANT OUR DEALING WITH THE REQUEST FOR RECONSIDERATION ON ITS MERITS.

SECTION 43 OF THE LABOUR RELATIONS ACT UNDER WHICH THIS APPLICATION WAS MADE CONTEMPLATES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS BE MADE "BY ANY OF THE EMPLOYEES IN THE BARGAINING UNIT". THE APPLICANT'S SOLICITOR CALLED MR. ROBINSON AS A WITNESS. MR. ROBINSON TESTIFIED THAT HE WAS AN EMPLOYEE OF THE INTERVENER ON THE DATE THIS APPLICATION WAS MADE AND THAT HE CEASED TO BE AN EMPLOYEE OF THE INTERVENER ON OR ABOUT OCTOBER 1ST, 1963. THE APPLICANT'S SOLICITOR THEN ADVISED THE BOARD THAT ALTHOUGH HE HAD NO FURTHER EVIDENCE TO INTRODUCE THROUGH MR. ROBINSON, HE WISHED TO MAKE HIM AVAILABLE TO THE RESPONDENT FOR EXAMINATION. NO FURTHER QUESTIONS WERE ASKED OF MR. ROBINSON BY ANY OF THE PARTIES. THE RESPONDENT IN ITS ARGUMENTS ACKNOWLEDGED THAT AT THE TIME THIS APPLICATION WAS MADE, THE STATUS OF THE APPLICANT WAS THAT OF AN EMPLOYEE.

ALTHOUGH THE APPLICATION WAS MADE IN THE NAME OF JAMES W. ROBINSON, THE TESTIMONY AT THE FIRST HEARING WITH RESPECT TO THE ORIGINATION OF THIS APPLICATION WAS THAT MR. SPENCER AND MR. POULTER, TWO OF THE EMPLOYEES OF THE INTERVENER WERE THE MOVING SPIRITS IN THE MATTER. IT WAS THEY WHO ATTENDED AT THE OFFICE OF THEIR SOLICITOR AND INSTRUCTED HIM TO PREPARE THE NECESSARY SUPPORTING DOCUMENT AS TO THE WISHES OF THE EMPLOYEES WHICH WAS FILED IN THIS MATTER. IN ADDITION MR. SPENCER AND MR. KANE (ANOTHER EMPLOYEE OF THE INTERVENER) WERE INSTRUMENTAL IN OBTAINING ALL THE SIGNATURES ON THE DOCUMENT. MR. SPENCER AND MR. KANE TESTIFIED AS TO HOW THE SIGNATURES ON THE DOCUMENT WHICH WAS FILED IN SUPPORT OF THIS APPLICATION WERE OBTAINED.

IN THE CIRCUMSTANCES SET OUT ABOVE, IT IS OBVIOUS THAT WHEN ROBINSON BROUGHT THIS APPLICATION HE BROUGHT IT NOT ONLY ON BEHALF OF HIMSELF BUT ALSO ON BEHALF OF SPENCER, POULTER AND KANE. ACCORDINGLY, WE FIND THAT THIS APPLICATION IS, IN ITS NATURE, A REPRESENTATIVE PROCEEDING. THE PETITION ITSELF IS THE MAIN OBJECT OF INQUIRY IN AN APPLICATION OF THIS TYPE WHEREIN THE BOARD MUST ASCERTAIN THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION.

IN THE CIRCUMSTANCES OF THIS CASE AND ESPECIALLY IN VIEW OF THE FACT THAT MR. SPENCER, MR. POULTER AND MR. KANE WERE THE PERSONS WHO WERE ACTIVE IN MAKING THIS APPLICATION, IT WOULD BE INEQUITABLE TO DISMISS THE APPLICATION SOLELY BECAUSE ROBINSON CEASED TO BE AN EMPLOYEE OF THE INTERVENER BETWEEN THE DATE THIS APPLICATION WAS MADE AND THE DATE OF THE HEARING. IF THE RESPONDENT'S ARGUMENT WERE SOUND, THE APPLICATION WOULD HAVE TO BE DISMISSED IF ROBINSON HAD BEEN DISCHARGED BY THE INTERVENER OR HAD DIED AT ANY TIME BETWEEN THE DATE AN APPLICATION WAS MADE AND BEFORE THE FINAL DISPOSITION OF THE CASE, I.E. EVEN AFTER A VOTE IS TAKEN.

IT IS OF INTEREST TO NOTE THAT PURSUANT TO SECTION 43 (3) OF THE ACT, WHERE THE BOARD IS SATISFIED THAT NO LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY

SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION, AS WAS THE SITUATION IN THIS CASE "THE BOARD SHALL BY A REPRESENTATION VOTE SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED." THE BOARD IN ITS DECISION OF FEBRUARY 10TH, 1964 HAS FOLLOWED THE MANDATORY PROVISIONS OF SECTION 43 (3) OF THE ACT.

THE BOARD THEREFORE FINDS NO SUBSTANCE, EITHER IN FACT OR IN LAW, IN THE ALLEGATION OF THE RESPONDENT THAT THIS APPLICATION SHOULD BE DISMISSED BY REASON ONLY THAT JAMES W. ROBINSON CEASED TO BE AN EMPLOYEE OF THE INTERVENER SUBSEQUENT TO THE MAKING OF THIS APPLICATION.

THE RESPONDENT'S REQUEST THAT THE BOARD VARY OR REVOKE ITS DECISION OF FEBRUARY 10TH, 1964 IN THIS MATTER IS ACCORDINGLY DENIED."

INDEXED ENDORSEMENT - SUCCESSOR STATUS (SECTION 47A)

7633-63-R: LOCAL UNION 175 (FOOD HANDLERS) OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. SUPER CITY LIMITED (RESPONDENT) PICKERING FARMS LIMITED (INTERVENER)

AND

7634-63-R: LOCAL UNION 633 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO; (APPLICANT) V. SUPER CITY LIMITED (RESPONDENT) V. PICKERING FARMS LIMITED (INTERVENER)

THE BOARD ENDORSED THE RECORD IN THESE MATTERS IN PART AS FOLLOWS:-

"THE EVIDENCE SUBMITTED BY THE REPRESENTATIVES OF THE APPLICANT IN SUPPORT OF ITS APPLICATION IS IN SUBSTANCE AS FOLLOWS: THE APPLICANT HAD A COLLECTIVE AGREEMENT WITH PICKERING FARMS LIMITED WHICH COVERED THE EMPLOYEES OF THAT COMPANY AT ITS DIXIE PLAZA STORE. PICKERING FARMS LIMITED CEASED OPERATIONS AT ITS DIXIE PLAZA STORE ON JANUARY 4, 1964, AND, ON OR ABOUT JANUARY 23, 1964, SUPER CITY LIMITED COMMENCED TO CARRY ON THE BUSINESS OF A SUPER MARKET AT THE PREMISES AT DIXIE PLAZA FORMERLY OCCUPIED BY PICKERING FARMS LIMITED. ALTHOUGH THERE WAS SOME DIFFERENCE BETWEEN THE PARTIES AS TO WHETHER THE BUSINESS NOW CARRIED ON BY SUPER CITY LIMITED IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS FORMERLY CARRIED ON BY PICKERING FARMS LIMITED AT THE LOCATION IN QUESTION, WE SHALL ASSUME FOR PRESENT PURPOSES THAT THERE IS NO SUBSTANTIAL CHANGE IN THE CHARACTER OF THE "TWO BUSINESSES". ONLY ONE OF THE EMPLOYEES WHO WORKED AT THE PICKERING FARMS STORE IS EMPLOYED AT THE SUPER CITY STORE. THE APPLICANT HAS NO KNOWLEDGE OF THE CIRCUMSTANCES IN WHICH THAT EMPLOYEE CAME TO BE EMPLOYED AT THE SUPER CITY STORE; COUNSEL FOR SUPER CITY LIMITED STATED THAT SHE WAS A "NEW HIRE". EVIDENCE WAS ALSO SUBMITTED ON BEHALF OF THE APPLICANT THAT MR. E. S. ROBERTSON IS PRESIDENT OF SUPER CITY LIMITED AND A DIRECTOR OF PICKERING FARMS LIMITED. MAIL ADDRESSED TO BOTH PICKERING FARMS LIMITED AND SUPER CITY LIMITED AT 545 LAKESHORE BOULEVARD, TORONTO, WAS DELIVERED TO THE ADDRESSEES.

THE REPRESENTATIVE OF THE APPLICANT SUBMITS THAT, ON THE BASIS OF THIS EVIDENCE, THE BOARD OUGHT TO CONDUCT FURTHER INQUIRIES ON ITS OWN INITIATIVE INTO THE CIRCUMSTANCES UNDER WHICH SUPER CITY LIMITED COMMENCED TO DO BUSINESS AT THE DIXIE PLAZA STORE; HE CONTENDS THAT THE FACTS LIE PECULIARLY WITHIN THE KNOWLEDGE OF SUPER CITY LIMITED AND ARE NOT KNOWN TO THE APPLICANT.

THE BOARD HAS NEVER UNDERTAKEN TO CONDUCT THE SORT OF INQUIRY THAT WOULD BE NECESSARY IF THE BOARD WERE TO ACCEPT THE SUBMISSION OF THE REPRESENTATIVE OF THE APPLICANT. THE ONUS RESTS ON THE APPLICANT TO PRODUCE BEFORE THE BOARD THE ESSENTIAL EVIDENCE UPON WHICH IT SEEKS TO BASE ITS CLAIM FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. IN THE INSTANT CASE, THE APPLICANT'S INVESTIGATION OF THE CIRCUMSTANCES WERE OF A SUPERFICIAL NATURE. IT DOES NOT EVEN APPEAR TO HAVE INTERVIEWED THE ONE EMPLOYEE OF PICKERING FARMS LIMITED WHO IS WORKING FOR SUPER CITY LIMITED TO ASCERTAIN HOW SHE CAME TO BE HIRED BY SUPER CITY LIMITED. THE APPLICANT COULD HAVE CALLED AS WITNESSES OFFICERS OR OFFICIALS OF PICKERING FARMS LIMITED OR OF SUPER CITY LIMITED OR ANY OTHER CORPORATION THAT MIGHT BE INVOLVED, AND IT COULD HAVE TAKEN OUT SUMMONSES REQUIRING THESE OFFICIALS TO PRODUCE AT THE HEARING OF THE BOARD RELEVANT DOCUMENTS. IT DID NONE OF THESE THINGS. INDEED, THERE MAY WELL HAVE BEEN OTHER AVENUES IT COULD HAVE, AND DID NOT, EXPLORE. THE APPLICATION IS ACCORDINGLY DISMISSED. HOWEVER, IN VIEW OF THE WORDING OF SUB-SECTION 7 OF SECTION 47A (WHICH DEALS WITH THE POWERS OF THE BOARD BEFORE DISPOSING OF AN APPLICATION), THE NATURE OF THE ONUS THAT RESTS ON AN APPLICANT IN SUCH PROCEEDING (WHICH WE HAVE SET OUT ABOVE), AND THE FACT THAT NO RULES OF PROCEDURE HAVE SO FAR BEEN FORMULATED BY THE BOARD WITH RESPECT TO APPLICATIONS FOR RELIEF UNDER SECTION 47A, THIS DISMISSAL IS WITHOUT PREJUDICE TO THE RIGHT OF THE APPLICANT TO RAISE THE ISSUE AGAIN IN THE PROCEEDING PRESENTLY PENDING BEFORE THE BOARD IN WHICH LOBLAW WORKERS COUNCIL HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR EMPLOYEES OF SUPER CITY LIMITED AT ITS DIXIE PLAZA STORE AND IN WHICH THE APPLICANTS IN THE TWO APPLICATIONS HERE UNDER CONSIDERATION INTERVENED (BOARD FILE 7631-63-R).

#### INDEXED ENDORSEMENT - SECTION 65

8054-63-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CORCORAN FOODS LIMITED (RESPONDENT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, NAMELY, FRED TOMLINSON, ARTHUR LEVESQUE, EDWARD BRANT, JOHN HOWARD, ALFRED EMSLEY, RONALD PACAUD, JAMES LAPOINTE AND JOSEPH MCLEOD WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48, 50(A), 50(C), 52, 54(2) AND 59(1) OF THE LABOUR RELATIONS ACT.

THE AGGRIEVED PERSONS WALKED OFF THEIR JOBS ON THE MORNING OF MARCH 9TH. THEY RECEIVED A WRITTEN NOTICE OF THEIR DISCHARGE BY THE RESPONDENT ON MARCH 10TH. THE DECISION OF THE AGGRIEVED PERSONS TO WALK OFF THEIR JOBS WAS TRIGGERED BY THE POSTING OF THE NOTICE BY THE RESPONDENT TO THE EFFECT THAT, BECAUSE EVIDENCE HAD BEEN DISCLOSED THAT THIEVERY HAD BEEN TAKING PLACE BY TRUSTED EMPLOYEES, SPOT CHECKS OF EMPLOYEES' CARS WOULD BE MADE PERIODICALLY. THE PRIMARY REASON FOR THE WALK-OUT ACCORDING TO THEIR EVIDENCE, HOWEVER, WAS BECAUSE MR. CORCORAN, THE OWNER OF THE RESPONDENT COMPANY, REFUSED TO MEET WITH THE AGGRIEVED EMPLOYEES THAT MORNING TO DISCUSS THEIR WORKING CONDITIONS. ALTHOUGH THEY TESTIFIED THAT WORKING CONDITIONS HAD BECOME INTOLERABLE, WE NOTE THAT THERE IS EVIDENCE THAT THE MEN WERE PREPARED TO RETURN TO WORK UNDER THE SAME CONDITIONS WITHIN AN HOUR AFTER WALKING OFF THEIR JOBS.

LET US ASSUME, HOWEVER, FOR PURPOSES OF ARGUMENT, BUT WITHOUT MAKING A FINDING, THAT THE WORK LOAD AND OTHER EMPLOYMENT CONDITIONS HAD SO CHANGED THAT THE AGGRIEVED PERSONS FOUND THEIR WORKING CONDITIONS INTOLERABLE. BY THEIR OWN ADMISSION, THEY WALKED OFF THEIR JOBS IN AN EFFORT TO FORCE CORCORAN TO MEET WITH THEM AND DISCUSS WORKING CONDITIONS. THIS ACTION WAS TAKEN DESPITE THE FACT THAT THE COMPLAINANT UNION HAD BEEN CERTIFIED AS THEIR BARGAINING AGENT LESS THAN ONE MONTH PRIOR TO THEIR WALK-OUT AND THE UNION HAD SERVED NOTICE ON THE RESPONDENT OF ITS DESIRE TO BARGAIN ON THEIR BEHALF. THEY ADMITTED, MOREOVER, THAT THEY ACTED WITHOUT THE KNOWLEDGE OR APPROVAL OF THE UNION AND WITH FULL KNOWLEDGE THAT THEIR CONDUCT CONSTITUTED AN UNLAWFUL STRIKE.

IN ORDER FOR THE BOARD TO DIRECT THE REINSTATEMENT OF THE AGGRIEVED PERSONS, IT WOULD HAVE TO FIND THAT THE RESPONDENT WITH DELIBERATE FORESIGHT CREATED WORKING CONDITIONS WHICH IT ANTICIPATED WOULD PRECIPITATE THEM INTO COMMITTING AN UNLAWFUL ACT SO AS TO HAVE OSTENSIBLE JUSTIFICATION FOR DISCHARGING THEM FOR THEIR UNION ACTIVITIES. THE EVIDENCE BEFORE US DOES NOT WARRANT SUCH A FINDING. WE FIND THAT THE RESPONDENT DID NOT DISCHARGE THE AGGRIEVED PERSONS IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT, BUT RATHER THAT THE RESPONDENT DISCHARGED THEM BECAUSE THEY ENGAGED IN A STRIKE IN VIOLATION OF SUBSECTION (2) OF SECTION 54 OF THE LABOUR RELATIONS ACT. IN ALL THE CIRCUMSTANCES THE BOARD CAN FIND NO BASIS FOR DIRECTING THE REINSTATEMENT OF THE AGGRIEVED PERSONS.

WITH REGARD TO THE CHANGES IN WORKING CONDITIONS ALLEGED BY THE COMPLAINANT, THERE IS EVIDENCE THAT THE RESPONDENT REQUIRED THE EMPLOYEES TO COMPLETE APPLICATIONS FOR EMPLOYMENT AND AT THE SAME TIME IT CIRCULATED WORK RULES. FURTHER, THE RESPONDENT INSTALLED A TIME CLOCK AND CHANGED THE METHOD OF PAYMENT FROM A WEEKLY TO AN HOURLY RATE. THERE IS ALSO EVIDENCE THAT THE RESPONDENT REDUCED OR CEASED TO PAY THE AGGRIEVED PERSONS FOR ABSENCES DUE TO SICKNESS. ALL OF THE ABOVE CHANGES WERE MADE BETWEEN THE DATE OF THE POSTING OF THE NOTICE OF THE COMPLAINANT UNION'S APPLICATION FOR CERTIFICATION ON FEBRUARY 3RD AND A



COUPLE OF DAYS AFTER THE CERTIFICATION OF THE COMPLAINANT UNION ON FEBRUARY 14TH. THESE CHANGES OCCURRED PRIOR TO THE GIVING OF WRITTEN NOTICE BY THE UNION TO THE RESPONDENT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT ON FEBRUARY 21ST. IN ADDITION, THERE IS EVIDENCE THAT FOLLOWING THE DATE OF POSTING OF THE NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION THE WORK LOAD WHICH THE AGGRIEVED PERSONS WERE REQUIRED TO FULFIL INCREASED. EVIDENCE ADDUCED IN CROSS-EXAMINATION HOWEVER, SUGGESTS THAT THE INCREASE MAY WELL HAVE OCCURRED IN THE LATTER PART OF JANUARY COINCIDENTAL WITH A NEW FOREMAN TAKING CHARGE OF THE LOADING AND DELIVERY OPERATIONS OF THE RESPONDENT. IN ANY EVENT, THE EVIDENCE INDICATES THAT AFTER THE CHANGE IN THE METHOD OF PAYMENT FROM A WEEKLY SALARY WITHOUT OVERTIME TO AN HOURLY RATE OF PAY WITH OVERTIME THE AGGRIEVED PERSONS RECEIVED SUBSTANTIALLY THE SAME IF NOT HIGHER EARNINGS. THE BOARD ACCORDINGLY FINDS THAT THERE IS NO BASIS UPON WHICH IT SHOULD DIRECT THE PAYMENT OF ANY COMPENSATION TO THE AGGRIEVED PERSONS.

THE BOARD HAVING DETERMINED THAT THE AGGRIEVED PERSONS ARE NOT ENTITLED TO EITHER REINSTATEMENT OR COMPENSATION, NO OTHER RELIEF IS AVAILABLE TO THEM UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. IT THEREFORE IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION WITH RESPECT TO THE REMAINING OFFENCES UNDER THE LABOUR RELATIONS ACT ALLEGED TO HAVE BEEN COMMITTED BY THE RESPONDENT.

THE COMPLAINT, ACCORDINGLY, IS DISMISSED."

#### SPECIAL ENDORSEMENTS IN CONCILIATION APPLICATIONS

8063-63-C: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE SUDBURY PUBLIC SCHOOL BOARD (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

THE APPLICANT FOR CONCILIATION SERVICES IN THIS CASE CLAIMS TO BE THE SUCCESSOR OF THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES (HEREINAFTER FOR BREVIITY REFERRED TO AS N.U.P.S.E.), WHICH WAS CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT, THE SUDBURY PUBLIC SHOOOL BOARD, IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF OCTOBER 16TH, 1963.

NOTICE THAT THE APPLICANT IN THIS APPLICATION WAS CLAIMING TO BE THE BARGAINING AGENT OF THE EMPLOYEES IN QUESTION SUCCESSOR TO N.U.P.S.E. WAS GIVEN TO THE EMPLOYEES AND FORM 29 OF THE BOARD'S RULES TOGETHER WITH THE BOARD'S ENDORSEMENT HEREIN OF APRIL 21ST, 1964, WERE DULY POSTED BY THE EMPLOYER. NONE OF THE EMPLOYEES HAVE MADE ANY REPRESENTATIONS TO THE BOARD ON THE MATTER.

AT THE HEARING HELD IN THIS CASE DOCUMENTARY AND VIVE VOCE EVIDENCE WAS PRESENTED TO THE BOARD BY THE APPLICANT CONCERNING



THE APPLICANT'S CLAIM AS A SUCCESSOR TO THE BARGAINING RIGHTS OF N. U. P. S. E. AND ARGUMENT WITH RESPECT THERETO WAS MADE BY COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT. EVIDENCE AND ARGUMENT WAS ALSO PRESENTED AT THE SAME TIME ON THE QUESTION AS TO WHETHER THE BOARD SHOULD GRANT CONCILIATION SERVICES.

THE EVIDENCE RELATING TO THE APPLICANT'S CLAIM AS A SUCCESSOR TO THE BARGAINING RIGHTS OF N.U.P.S.E. ESTABLISHED THE FOLLOWING RELEVANT FACTS:-

- (A) ON OR ABOUT THE 30TH DAY OF MARCH, 1963, AND AFTER THE SAME HAD BEEN APPROVED BY THE LOCALS CONCERNED OF BOTH UNIONS, STANLEY LITTLE ON BEHALF OF N.B.P.S.E. AND W. BUSS ON BEHALF OF THE NATIONAL UNION OF PUBLIC EMPLOYEES, SIGNED A MERGER AGREEMENT PROVIDING TERMS AND CONDITIONS FOR THE MERGER OF THESE TWO UNIONS INTO A NEW UNION TO BE KNOWN AS THE CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER CALLED C.U.P.E.);
- (B) THIS MERGER AGREEMENT ALSO INCORPORATED A PROPOSED DRAFT CONSTITUTION. THE AGREEMENT PROVIDED IN PART AS FOLLOWS:-
  - 1. THAT FOLLOWING THE RATIFICATION AND APPROVAL WITHOUT AMENDMENT OR MODIFICATION BY THE CONVENTION OF THE NATIONAL UNION OF PUBLIC EMPLOYEES AND BY THE CONVENTION OF THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES OF THIS MERGER AGREEMENT AND OF THE PROPOSED CONSTITUTION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, WHICH SAID CONSTITUTION FORMS PART OF THIS MERGER AGREEMENT, THE FOUNDING CONVENTION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES WILL TAKE PLACE IN WINNIPEG, MANITOBA, ON SEPTEMBER 24TH, 25TH AND 26TH, 1963.
  - 2. THAT THE NATIONAL UNION OF PUBLIC EMPLOYEES AND THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES SHALL MERGE INTO ONE ORGANIZATION TO BE KNOWN AS THE CANADIAN UNION OF PUBLIC EMPLOYEES WHICH SHALL EMBRACE AS EQUALS ALL ORGANIZATIONS PRESENTLY CHARTERED BY THE PARTIES TO THIS MERGER AND WILLING TO ACCEPT AND ABIDE BY THE CONSTITUTION AND BY-LAWS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. —
  - 5. THAT HAVING ADOPTED THIS MERGER AGREEMENT AND THE PROPOSED CONSTITUTION, THE FOUNDING CONVENTION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES SHALL NOT CONSIDER ANY AMENDMENTS THERETO.--
  - 9. THAT LOCAL UNIONS WILL RETAIN THEIR EXISTING LOCAL NUMBERS WHERE THERE IS NO DUPLICATION. WHERE THERE IS A DUPLICATION OF CHARTER NUMBERS, THE LOCAL UNION HAVING SMALLER MEMBERSHIP SHALL BE ALLOCATED A NEW NUMBER. WHERE THE MEMBERSHIP IS APPROXIMATELY EQUAL THE LOCAL UNION WHICH HAS BEEN IN EXISTENCE FOR THE LONGER PERIOD OF TIME SHALL BE PERMITTED TO RETAIN ITS CHARTER NUMBER.--

- (c) THE MERGER AGREEMENT TOGETHER WITH THE DRAFT CONSTITUTION WERE THEREAFTER APPROVED IN SEPARATE MEETINGS BY THE DELEGATES OF EACH OF THE RESPECTIVE UNIONS ON OR ABOUT SEPTEMBER 23RD, 1963, AT WINNIPEG;
- (d) FOLLOWING THE SEPARATE APPROVAL OF THE MERGER AGREEMENT AND CONSTITUTION BY THE DELEGATES OF THE TWO UNIONS, THESE DELEGATES THEN MET ON OR ABOUT SEPTEMBER 24TH, 1963, AT A FOUNDING CONVENTION AT WINNIPEG AND ACCEPTED THE AGREEMENT AND FORMALLY AND DULY ADOPTED THE CONSTITUTION CREATING THE NEW UNION, C.U.P.E., AND ELECTED THE OFFICERS THEREOF;
- (e) THE FOLLOWING RESOLUTION WAS ALSO PASSED AT THE FOUNDING CONVENTION, NAMELY,

WHEREAS THE N.U.P.S.E. AND THE N.U.P.S.E. ON THE 23RD DAY OF SEPTEMBER 1963, ENTERED INTO A MERGER AGREEMENT TO CREATE THE C.U.P.E. AND

WHEREAS, WITH THE FORMATION OF THE C.U.P.E., THE N.U.P.S.E. AND THE N.U.P.E. WILL CEASE TO EXIST AS SEPARATE ORGANIZATIONS,

WHEREAS COLLECTIVE AGREEMENTS HAVE BEEN MADE AND CERTIFICATIONS HAVE BEEN OBTAINED BY CHARTERED LOCAL UNIONS IN THE NAME OF THE N.U.P.S.E., AND IN THE NAME OF THE N.U.P.E. AND

WHEREAS THE NAMES OF THE CHARTERED LOCAL UNIONS AND IN SOME CASES THE NUMBERS OF CHARTERED LOCAL UNIONS WILL BE CHANGED IN ACCORDANCE WITH THE MERGER AGREEMENT AND THE CONSTITUTION OF THE C.U.P.E.

THEREFORE BE IT RESOLVED:

THAT EVERY LOCAL UNION CHARTERED BY THE N.U.P.S.E. AND THE N.U.P.E. SHALL RETAIN ITS CHARTER WHICH SHALL BECOME AND CONTINUE AS THE CHARTER OF THE C.U.P.E. AND BY VIRTUE OF THE SAME AND AS A RESULT OF THE MERGER AGREEMENT BETWEEN THE N.U.P.S.E. AND THE N.U.P.E. AND THE CONSTITUTION OF THE C.U.P.E. EVERY SUCH CHARTERED LOCAL UNION SHALL BE A CHARTERED LOCAL UNION OF THE C.U.P.E. AND BE SUBJECT TO ITS CONSTITUTION AND RULES AND REGULATIONS.

PROVIDED THAT EVERY SUCH CHARTERED LOCAL UNION MAY, AND IT IS HEREBY AUTHORIZED TO, CONTINUE TO USE AND TO BE KNOWN BY ITS PRESENT NAME AND NUMBER UNTIL SUCH TIME AS, AND IN ACCORDANCE WITH THE MERGER AGREEMENT AND PARTICULARLY SECTION 9 THEREOF, A CHANGE TO A NEW NAME AND/OR NUMBER HAS BEEN AGREED UPON WITH THE EMPLOYER OR EMPLOYERS WITH WHOM THE CHARTERED LOCAL UNION HAS A COLLECTIVE AGREEMENT OR AGREEMENTS, AND/OR SUCH CHANGE HAS

BEEN MADE IN ACCORDANCE WITH THE PROCEDURES OF AND BEEN APPROVED BY THE LABOUR RELATIONS BOARD HAVING JURISDICTION OVER THE PARTICULAR COLLECTIVE AGREEMENT OR CERTIFICATION.

IT IS UNDERSTOOD AND AGREED THAT NOTHING IN THE FOREGOING SHALL IN ANY WAY RESTRICT THE RIGHT OF ANY LOCAL UNION OF N.U.P.S.E. OR N.U.P.E. TO JOIN THE CANADIAN UNION OF PUBLIC EMPLOYEES.

THE RELEVANT PORTIONS OF SECTION 47 (1) UNDER WHICH THE APPLICANT SEEKS A DECLARATION THAT IT HAS SUCCEEDED TO THE BARGAINING RIGHTS OF N.U.P.S.E. FOR THE EMPLOYEES IN THE BARGAINING UNIT READ AS FOLLOWS:-

WHERE A TRADE UNION CLAIMS THAT BY REASON OF A MERGER -- IT IS THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, -- WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER AND ANY QUESTION ARISES IN RESPECT OF ITS RIGHT TO ACT AS THE SUCCESSOR, THE BOARD, IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED, MAY DECLARE THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR, OR THE BOARD MAY DISMISS THE APPLICATION.

THE EVIDENCE ESTABLISHES THAT ON OR ABOUT SEPTEMBER 24TH, 1963, THERE WAS A MERGER OF N.U.P.S.E. AND N.U.P.E. INTO A NEW TRADE UNION C.U.P.E. ACCORDINGLY, THE BOARD COULD, IN A PROPER CASE, MAKE AN AFFIRMATIVE DECLARATION UNDER SECTION 47 (1) THAT C.U.P.E. HAS SUCCEEDED TO BARGAINING RIGHTS HELD BY N.U.P.S.E. AND N.U.P.E. IT IS OBVIOUS, HOWEVER, THAT N.U.P.S.E. WAS NOT THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT IN THIS CASE "AT THE TIME OF THE MERGER". AT THE TIME OF THE MERGER, N.U.P.S.E. WAS ONLY AN APPLICANT FOR CERTIFICATION. AS N.U.P.S.E. WAS NOT THE BARGAINING AGENT OF THE UNIT OF EMPLOYEES IN QUESTION, "AT THE TIME OF THE MERGER" THIS IS NOT A PROPER CASE UNDER SECTION 47 (1) FOR THE BOARD TO MAKE THE DECLARATION SOUGHT BY THE APPLICANT, C.U.P.E.

IT IS, OUR OPINION, THAT THE APPLICANT'S REMEDY, IF ANY, IS BY WAY OF AN APPLICATION FOR RECONSIDERATION TO THE DIVISION OF THE BOARD WHICH PRESIDED ON THE APPLICATION FOR CERTIFICATION (WHICH DIVISION IS DIFFERENTLY CONSTITUTED FROM THE PRESENT) FOR RECTIFICATION OF THE BOARD'S ORDER CERTIFYING N.U.P.S.E., WHICH AT THE TIME OF THE MAKING OF THE ORDER HAD APPARENTLY CEASED TO EXIST. IT WOULD APPEAR THAT THE BOARD'S DECISION TO CERTIFY N.U.P.S.E. IN THE CERTIFICATION CASE TOOK PLACE AS A RESULT OF A REPRESENTATION VOTE HELD ON OCTOBER 7TH, 1963, IN WHICH A MAJORITY OF EMPLOYEES VOTED FOR THE NAMED BUT THEN NON-EXISTENT APPLICANT, N.U.P.S.E. IN ALL THE CIRCUMSTANCES, WE ARE NOT PERSUADED THAT IT WOULD BE PROPER OR APPROPRIATE FOR THIS DIVISION OF THE BOARD TO EMBARK ON

ANY RECONSIDERATION OF THE ORDER OF ANOTHER DIVISION OF THE BOARD DIFFERENTLY CONSTITUTED IN THE CERTIFICATION CASE.

IN THE RESULT, THIS APPLICATION FOR CONCILIATION SERVICES MUST BE DISMISSED.

8393-64-C      THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 597, (APPLICANT) V. OSHAWA DISTRICT CONSTRUCTION EXCHANGE (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WHILE THE UNION NEGOTIATING COMMITTEE MIGHT NOT HAVE URGED ACCEPTANCE OF THE FIRST OFFER MADE BY THE EXCHANGE NEGOTIATING COMMITTEE, THE EVIDENCE IS THAT THEY DID RECOMMEND ACCEPTANCE OF THE OFFER MADE BY THE EXCHANGE'S COMMITTEE AT THE FIFTH MEETING BETWEEN THE PARTIES. FURTHER NEGOTIATIONS AT THE SIXTH MEETING RESULTED IN A STALEMATE.

THE EXCHANGE SUBMITS, HOWEVER, THAT DESPITE THESE CIRCUMSTANCES, THE UNION IS NOT BARGAINING IN GOOD FAITH BECAUSE, SO IT IS ALLEGED, THE UNION IS IN A FAVOURABLE POSITION IF A STRIKE IS CALLED BY VIRTUE OF ANOTHER COLLECTIVE AGREEMENT IT HAS SIGNED WITH A NON-RESIDENT CONTRACTOR. EVEN ASSUMING THIS TO BE THE CASE, IT SEEMS TO US THAT A DIRECTION TO MEET AND BARGAIN AT THIS STAGE OF THE PROCEEDINGS WOULD NOT RESOLVE THE DIFFERENCES BETWEEN THE PARTIES. IN OUR VIEW, THE TIME IS APPROPRIATE FOR INTERVENTION BY A NEUTRAL THIRD PARTY.

THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO THE EMPLOYEES OF THE EMPLOYERS BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE MAY 1ST, 1962.

STATISTICAL TABLES FOR MAY 1964

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MAY 1964	1ST 2 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	71	145	121
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	13	16
III. DECLARATION OF SUCCESSOR STATUS	1	1	-
IV. CONCILIATION SERVICES	118	233	276
V. DECLARATION THAT STRIKE UNLAWFUL	7	7	3
VI. DECLARATION THAT LOCK OUT UNLAWFUL	1	1	-
VII. CONSENT TO PROSECUTE	4	9	64
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	16	18
IX. MISCELLANEOUS	1	1	1
	<u>218</u>	<u>426</u>	<u>510</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	MAY 1964	1ST 2 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	89	183	186



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MAY 1964	1ST 2 MONTHS OF FISCAL YEAR	
		1964 - 65	1963 - 64
I. CERTIFICATION	68	144	147
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	11	27
III. DECLARATION OF SUCCESSOR STATUS	2	3	1
IV. CONCILIATION SERVICES	123	285	277
V. DECLARATION THAT STRIKE UNLAWFUL	-	-	2
VI. DECLARATION THAT LOCKOUT UNLAWFUL	1	1	-
VII. CONSENT TO PROSECUTE	3	6	50
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	3	29
IX. MISCELLANEOUS	4	5	-
	<hr/>	<hr/>	<hr/>
TOTAL	219	486	533
	<hr/>	<hr/>	<hr/>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	MAY 1964	1ST 2 MONTHS 1964-65	FISCAL YEAR 1963-64	MAY 1964	1ST 2 MONTHS 1964-65	FISCAL YEAR 1963-64
I. <u>CERTIFICATION</u>						
GRANTED	48	106	111	1793	4119	3927
DISMISSED	10	23	22	520	2121	729
WITHDRAWN	10	15	14	191	263	201
	<u>68</u>	<u>144</u>	<u>147</u>	<u>2504</u>	<u>6503</u>	<u>4857</u>
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
II. <u>TERMINATION OF</u>						
<u>BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	6	20	91	124	446
DISMISSED	4	4	7	96	96	261
WITHDRAWN	-	1	-	-	64	-
	<u>7</u>	<u>11</u>	<u>27</u>	<u>187</u>	<u>284</u>	<u>707</u>
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF VOTES		
		MAY 1964	1ST 2 MONTHS FISCAL YEAR 1964-65	1962-63
III.	<u>CONCILIATION SERVICES*</u>			
	REFERRED	106	254	242
	DISMISSED	13	19	2
	WITHDRAWN	4	12	21
	TOTAL	<u>123</u>	<u>285</u>	<u>265</u>
IV.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	-	-	2
	TOTAL	<u>-</u>	<u>-</u>	<u>2</u>
V.	<u>DECLARATION THAT LOCKOUT UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	3
	WITHDRAWN	1	1	-
	TOTAL	<u>1</u>	<u>1</u>	<u>3</u>
VI.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	1	9
	DISMISSED	-	1	-
	WITHDRAWN	3	4	11
	TOTAL	<u>3</u>	<u>6</u>	<u>20</u>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES RE UNIONS  
CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1964	1ST 2 MONTHS FISCAL YEAR	
		1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	4	5
POST-HEARING VOTE	3	5	16
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	1	3
POST-HEARING VOTE	4	13	11
BALLOTS NOT COUNTED	-	-	1
TOTAL	<u>8</u>	<u>23</u>	<u>36</u>

\* INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1964	1ST 2 MONTHS OF FISCAL YEAR	
		1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	1	3	6
TOTAL	<u>1</u>	<u>3</u>	<u>7</u>

\* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





JUNE, 1964

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ONTARIO

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ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1964

BARGAINING AGENTS CERTIFIED DURING JUNE

NO VOTE CONDUCTED

8275-64-R: LOCAL 101, CANADIAN UNION OF OPERATING ENGINEERS, (APPLICANT) V. SUNNY ORANGE CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN THE COMPRESSOR ROOM AT ITS PLANT IN METROPOLITAN TORONTO." (4 EMPLOYEES IN THE UNIT).  
(SPECIAL CIRCUMSTANCES OF THIS CASE).

8294-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FOSTER WHEELER LIMITED (RESPONDENT).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALES PERSONNEL, PROFESSIONAL ENGINEERS, PLANT NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS, ONE SECRETARY TO EACH OF THE FOLLOWING: CHAIRMAN OF THE BOARD, PRESIDENT, VICE PRESIDENT MANUFACTURING, VICE PRESIDENT SALES, SECRETARY AND TREASURER, LABOUR RELATIONS MANAGER, MANAGER TO OFFICE SERVICES, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO-CLC, FOSTER WHEELER BRANCH, AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO-CLC." (116 EMPLOYEES IN THE UNIT).

8369-64-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION No. 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ONTARIO GASOLINE AND OIL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSE OF CLARITY, THE BOARD DECLARES THAT SERVICE STAFF EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT. FOR THE PURPOSES OF CLARITY THE BOARD FURTHER DECLARES THAT DRIVER-SALESMEN ARE NOT INCLUDED IN THE TERM "SALES STAFF" I.E., THEY ARE INCLUDED IN THE BARGAINING UNIT."

8433-64-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS INTERNATIONAL UNION, LOCAL 197 (APPLICANT) V. MODJESKA HOUSE (RESPONDENT).

UNIT: "ALL TAPMEN AND BEVERAGE ROOM WAITERS EMPLOYED BY THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (3 EMPLOYEES IN THE UNIT).

8435-64-R: JARRY ELECTRONICS EMPLOYEES' ASSOCIATION (APPLICANT) V. JARRY HYDRAULICS LIMITED JARRY ELECTRONICS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (86 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8444-64-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN GUELPH, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8474-64-R: LOCAL 101 OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE RIVERDALE HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE OPERATION AND MAINTENANCE OF ITS BOILER, AIR COMPRESSOR, REFRIGERATION AND AIR CONDITIONING EQUIPMENT AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT)

(AGREEMENT OF THE PARTIES).

8511-64-R: ST. CATHARINES TYPOGRAPHICAL UNION No. 416 (APPLICANT) V. ADIE LINCOLN PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COMPOSING ROOM, PRESS ROOM, MAILING ROOM AND BINDERY DEPARTMENT AT ST. CATHARINES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8520-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (APPLICANT) V. NABISCO FOODS, DIVISION OF NABISCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NAPANEE, SAVE AND EXCEPT PLANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF PLANT SUPERINTENDENT AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

8529-64-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. SHOWTIME FASHIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

8530-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. DUNLOP CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT SECTION SUPERVISORS, PERSONS ABOVE THE RANK OF SECTION SUPERVISOR, PROFESSIONAL ENGINEERS EMPLOYED IN A PROFESSIONAL CAPACITY, SENIOR DRAUGHTSMAN, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENTS, PERSONS EMPLOYED IN THE SALARIES AND PENSIONS DEPARTMENT, AUDITORS, SALESMEN AND SALES TRAINEES, TIME STUDY AND METHODS ANALYSTS, SYSTEMS ANALYSTS, PROGRAMMER ANALYSTS, SENIOR PROGRAMMERS, PROGRAMMERS, REGISTERED NURSES, COMPOUNDS ENGINEER, SECURITY GUARDS, SECRETARIES TO DIVISION AND DEPARTMENT HEADS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (85 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE DIVISION AND DEPARTMENT HEADS CONTEMPLATED IN THE DESCRIPTION ARE THE FOLLOWING: THE PRESIDENT, VICE-PRESIDENT MANUFACTURING, SECRETARY-TREASURER, GENERAL SALES MANAGER, MANAGER OF THE TECHNICAL DEPARTMENT, ADVERTISING MANAGER, CREDIT MANAGER, PRODUCTION SUPERINTENDENT AND THE CHIEF ENGINEER. STENOGRAPHERS EMPLOYED IN THE SYSTEMS DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT. THE SAFETY OFFICER IS A MEMBER OF THE PERSONNEL DEPARTMENT AND IS EXCLUDED FROM THE BARGAINING UNIT."

8536-64-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. TRUCK ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

8545-64-R: MUTUEL EMPLOYEES ASSOCIATION, LOCAL 528, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (APPLICANT) v. THE THORNCLIFFE PARK RACING AND BREEDING ASSOCIATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE PARI-MUTUEL DEPARTMENT OF ITS TROTTING OR HARNESS RACING OPERATIONS, SAVE AND EXCEPT THE DIRECTOR OF MUTUELS, MUTUEL MANAGERS, ASSISTANT MUTUEL MANAGERS, TICKET ROOM MANAGER, HEAD CASHIERS, AUDITOR IN CHARGE OF CALCULATOR AND SHEET WRITERS, DIVISION OR FLOOR SUPERVISORS, PAYMASTERS, PAYMASTERS' SECRETARY, SECURITY MEN AND OFFICE STAFF." (172 EMPLOYEES IN THE UNIT).

8547-64-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA AFL-CIO, CLC (APPLICANT) v. W.O. HUGHES & SONS "CORN FLOWER" LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

8557-64-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F. OF L. - C.I.O., C.L.C. (APPLICANT) v. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT). (7 EMPLOYEES IN THE UNIT).

UNIT: "ALL DRAFTSMEN AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT IN THE ENGINEERING DEPARTMENT OF THE CONSTRUCTION INDUSTRY DIVISION AT ITS PLANT #4 IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT DRAFTING SUPERVISORS, PERSONS ABOVE THE RANK OF DRAFTING SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8565-64R: INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

THE APPLICANT UNION REQUESTED CERTIFICATION FOR EMPLOYEES OF THE RESPONDENT COMPANY IN THE PROVINCE OF ONTARIO AND STATED THAT EMPLOYEES OF THE COMPANY WERE WORKING ON CONSTRUCTION SITES IN TORONTO, SAULT STE. MARIE, TILBURY, OTTAWA (CRESTVIEW), LANCASTER AND CARDINAL. THE BOARD ISSUED FIVE DECISIONS TWO OF WHICH ARE GIVEN BELOW. THE REMAINING THREE DECISIONS ARE GIVEN IN THIS REPORT UNDER THE HEADING "APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED".

UNIT: "ALL CONSTRUCTION LABOURERS EMPLOYED BY THE RESPONDENT IN THE TOWNSHIP OF LANCASTER IN THE COUNTY OF GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT)

UNIT: "ALL CONSTRUCTION LABOURERS EMPLOYED BY THE RESPONDENT IN THE TOWNSHIP OF EDWARDSBURG IN THE COUNTY OF GRENVILLE AND IN THE TOWNSHIP OF MATILDA IN THE COUNTY OF DUNDAS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN BOTH THE ABOVE DECISIONS IN PART AS FOLLOWS:-

"HAVING REGARD TO THE FACT THAT THE OTTAWA AREA IS TO BE REVIEWED BY THE BOARD SHORTLY AND TO THE CONFUSED PICTURE RESPECTING THE PATTERN OF COLLECTIVE BARGAINING IN EASTERN ONTARIO THE BOARD IS NOT PREPARED AT THE PRESENT TIME TO GRANT A UNIT CONSISTING OF THE FOUR COUNTIES OF DUNDAS, STORMONT, GLENGARRY AND GRENVILLE."

8566-64-R: HOTELS, CLUBS, RESTAURANTS AND TAVERNS EMPLOYEES UNION LOCAL 261. AFFILIATED WITH A.F. OF L. - C.I.O. AND C.L.C. (APPLICANT) V. BRUCE MACDONALD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BRUCE MACDONALD MOTOR LODGE, 1 1/2 MILES EAST OF THE CITY LIMITS OF OTTAWA AT BELLS CORNERS IN NEPEAN TOWNSHIP, SAVE AND EXCEPT MANAGER, DEPARTMENT HEADS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

8567-64-R: FOOD HANDLER'S LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN THE VICINITY KNOWN AS ROUGE HILL IN THE TOWNSHIP OF PICKERING, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS HIRED DURING THE SCHOOL VACATION PERIOD AND DURING OFF-SCHOOL HOURS." (9 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE DESIGNATION ROUGE HILL, WHILE NOT A MUNICIPALITY, DOES ADEQUATELY IDENTIFY THE GEOGRAPHICAL LIMITS OF THE BARGAINING UNIT."

8569-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RIVERSIDE FISHERIES LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MAY 27TH, 1964 ISSUED TO THE APPLICANT WITH RESPECT TO CERTAIN EMPLOYEES OF THE RESPONDENT." (23 EMPLOYEES IN THE UNIT).

8581-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL #493 (APPLICANT) V. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT SAINT MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

8582-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. METROPOLITAN STORES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT STORE MANAGER, FLOORMEN, FLOORLADIES, PERSONS ABOVE THE RANKS OF FLOORMAN AND FLOORLADY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8587-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TORIN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM TORONTO CITY HALL, INCLUDING THE TOWN OF NEWMARKET AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

8606-64-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA (APPLICANT) V. SUPERIOR PAINTING (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).



8632-64-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) v. W. F. FLYNN & Co. (RESPONDENT) v. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL - CIO) (CLC) (INTERVENER).

TWO APPLICATIONS FOR CERTIFICATION WERE MADE FOR EMPLOYEES OF THE RESPONDENT. THE BOARD FOUND THAT THE APPLICATION AND THE APPLICATION OF THE INTERVENER FOR CERTIFICATION WERE APPLICATIONS WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT AND DETERMINED BARGAINING UNITS AS FOLLOWS:-

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND CONSTRUCTION LABOURERS." (22 EMPLOYEES IN THE UNIT).

(GRANTED TO APPLICANT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(GRANTED TO INTERVENER).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS MATTER WAS LISTED FOR HEARING IN OTTAWA FOR THE PURPOSE OF ENTERTAINING REPRESENTATIONS ON THE QUESTION OF AN APPROPRIATE GEOGRAPHIC AREA IN CERTIFICATION CASES ARISING IN EASTERN ONTARIO. IN ADDITION TO THE PARTIES SOME 18 TRADE UNIONS AND 8 EMPLOYER ORGANIZATIONS WERE INVITED TO ATTEND THE HEARING AND MAKE REPRESENTATIONS TO THE BOARD. SEVEN TRADE UNIONS, NAMELY, OPERATING ENGINEERS, WOOD, WIRE AND METAL LATHERS, PLUMBERS, SHEET METAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, CARPENTERS AND BRICKLAYERS APPEARED IN RESPONSE TO THIS INVITATION. THE RESPONDENT EMPLOYER DID NOT APPEAR AND APART FROM A REPRESENTATIVE FROM THE OTTAWA BUILDERS' EXCHANGE WHO APPEARED PART WAY THROUGH THE PROCEEDINGS BUT MADE NO REPRESENTATIONS, NO EMPLOYER ORGANIZATION APPEARED BEFORE US.

THE BOARD APPRECIATES THE ASSISTANCE RENDERED BY THE TRADE UNION REPRESENTATIVES IN THIS MATTER.

AS WAS POINTED OUT IN THE LETTER ACCOMPANYING THE NOTICE OF HEARING, IT HAS BEEN THE PRACTICE OF THE BOARD TO GRANT A UNIT IN TERMS OF "EMPLOYEES WORKING AT OR OUT OF OTTAWA". WHILE CURRENT BARGAINING PRACTICES IN THIS AREA DO NOT CONFORM TO THIS DESCRIPTION, IT IS CLEAR FROM THE AGREEMENTS ON FILE WITH THE BOARD (AND ANNOUNCED AT THE HEARING) AND FROM THE REPRESENTATIONS MADE TO THE BOARD THAT THERE ARE WIDE VARIATIONS IN THE AREAS COVERED BY THE VARIOUS AGREEMENTS AS WELL AS IN THE GEOGRAPHICAL JURISDICTIONS OF LOCAL UNIONS IN EASTERN ONTARIO. HOWEVER, THE COUNTIES OF CARLETON (EXCEPT THE TOWNSHIP OF MARLBOROUGH), RUSSELL AND PRESCOTT FORM A MINIMUM AREA WHICH IS INCLUDED IN MOST COLLECTIVE AGREEMENTS IN THE AREA.

FURTHERMORE, THE GEOGRAPHICAL JURISDICTION OF LOCAL UNIONS IN THE AREA (WITH EXCEPTION OF THE CARPENTERS) INCLUDES AT LEAST THESE 3 COUNTIES (MINUS IN SOME INSTANCES THE TOWNSHIP OF MARLBOROUGH). IN THE CASE OF THE CARPENTERS, THE JURISDICTION OF LOCAL 93 EXTENDS ONLY TO THE WESTERN PORTION OF THE COUNTY OF PRESCOTT.

AFTER CONSIDERING ALL THE EVIDENCE BEFORE US IT IS APPARENT THAT ANY AREA FOUND TO BE APPROPRIATE WOULD CONFLICT WITH ONE OR MORE OF THE EXISTING PATTERNS FOUND IN CURRENT COLLECTIVE AGREEMENTS IN EASTERN ONTARIO. HOWEVER, THE AREA DESCRIBED ABOVE DOES NOT CONFLICT WITH THE JURISDICTIONS OF THE TWO LOCALS INVOLVED IN THIS CASE AND FOR THE MOST PART DOES NOT CONFLICT WITH THE COLLECTIVE BARGAINING PATTERNS WHICH THESE TWO UNIONS HAVE ESTABLISHED WITH EMPLOYERS IN THE AREA. IT IS TRUE THAT BOTH LOCALS HAVE A WIDER JURISDICTION. IT IS ALSO TRUE THAT THE APPLICANT UNION HAS COLLECTIVE AGREEMENTS COVERING A WIDER AREA AND THAT THE INTERVENING UNION HAS COLLECTIVE AGREEMENTS WHICH DO NOT EMBRACE THE WHOLE OF THE COUNTY OF PRESCOTT. AFTER MUCH ANXIOUS REFLECTION WE HAVE CONCLUDED THAT IN ALL THE CIRCUMSTANCES AND FOR THE PURPOSE OF THESE TWO UNIONS ONLY, AN AREA CONSISTING OF THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH WOULD FORM AN APPROPRIATE GEOGRAPHIC AREA."

8633-64-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL NO. 124, OTTAWA - HULL (APPLICANT) V. PERINI LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

8634-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. DELTA READY MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

8643-64-R: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) V. STAUFFER-DOBBIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, LABORATORY PERSONNEL, DESIGNING AND OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (452 EMPLOYEES IN THE UNIT).

8646-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ASSOCIATED TRANSIT PRESTON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

8664-64-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT PROPOSES THAT THE CERTIFICATE BE RESTRICTED TO THE PROJECT. IN ANDEEN CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1962, P. 295; 63 C.L.L.C. 1142, THE BOARD POINTED OUT THAT SECTION 92 OF THE LABOUR RELATIONS ACT CONTAINED A LEGISLATIVE PROHIBITION AGAINST PROJECT CERTIFICATIONS AND SINCE THE COMING INTO FORCE OF THIS SECTION NO PROJECT CERTIFICATION HAS BEEN ISSUED BY THE BOARD IN A CASE FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS.

IN SEVERAL CASES INVOLVING JOB SITES IN THE ATIKOKAN AREA, FOR EXAMPLE McNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.O.R.B. MONTHLY REPORT, JULY 1963, P. 184, THE BOARD HAS GRANTED AN AREA CONSISTING OF THE DISTRICT OF RAINY RIVER. THERE DOES NOT APPEAR TO BE REASON FOR DEPARTING FROM THIS PRACTICE IN THE PRESENT CASE.

THEREFORE, THE BOARD FINDS FURTHER THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING!"

8682-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DIEBOLD OF CANADA LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS EMPLOYED IN THE CUSTOMER SERVICE AND ERECTION DEPARTMENT, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (119 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8696-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADA-FERRO COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT).



8701-64-R: METAL POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION, LOCAL 19, (APPLICANT) v. J.A. MCFARLANE ENGINEERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

8705-64-R: HAMILTON, LOCAL 145, WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION (APPLICANT) v. ROC LATHING LTD. (RESPONDENT).

UNIT: "ALL JOURNEYMEN LATHERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF HAMILTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO GRANT AREAS CORRESPONDING TO BOUNDARIES DETERMINED UNDER THE INDUSTRIAL STANDARDS ACT.

A REVIEW OF THE COLLECTIVE AGREEMENTS ON FILE WITH THE BOARD BETWEEN HAMILTON TRADE UNIONS AND CONTRACTORS REVEALS NO CONSISTENT PATTERN OF COLLECTIVE BARGAINING RESPECTING THE GEOGRAPHIC AREAS COVERED BY THE AGREEMENTS. THUS, FOR EXAMPLE, THE AREAS COVERED BY THE AGREEMENTS WHICH THE GENERAL CONTRACTORS' SECTION OF THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS' EXCHANGE HAS WITH THE OPERATING ENGINEERS', THE CARPENTERS' AND THE LABOURERS' UNIONS ARE ALL DIFFERENT. SOME OF THESE AREAS MAY ENCROACH ON THE AREA WHICH THE BOARD HAS RECOGNIZED AS BEING APPROPRIATE FOR THE NIAGARA PENINSULA.

AT THE PRESENT TIME, THEREFORE, THE BOARD IS NOT PREPARED TO MAKE ANY FINAL DETERMINATION AS TO WHAT CONSTITUTES AN APPROPRIATE GEOGRAPHIC AREA FOR HAMILTON TRADE UNIONS AND EMPLOYERS IN THE CONSTRUCTION INDUSTRY. IN SIMILAR SITUATIONS INVOLVING OTHER LOCALES IN THE PROVINCE THE BOARD HAS CONFINED THE AREA UNTIL A MORE CONSISTENT PATTERN EVOLVES OR UNTIL THE BOARD HAS HAD AN OPPORTUNITY TO REVIEW THE MATTER IN THE PRESENCE OF ALL INTERESTED PARTIES."

8743-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #1450 (APPLICANT) v. A. W. HOMME LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF PETERBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

8710-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. SCHWITZER CORPORATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

8711-64-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. ONTARIO TURKEY GROWERS CO-OPERATIVE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT SUPERINTENDENT THOSE ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (37 EMPLOYEES IN THE UNIT).

8755-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. HILL-CLARK-FRANCIS, LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD'S PRACTICE HAS BEEN TO GRANT AN AREA CONSISTING OF THE DISTRICT OF THUNDER BAY. SEE ALCAN COLONY CONSTRUCTION COMPANY, O.L.R.B. MONTHLY REPORT, MARCH 1963, P. 507-8. THE BOARD SEES NO REASON TO DEPART FROM THIS PRACTICE IN THE PRESENT CASE.

8758-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KEY-AIR CONDITIONING AND REFRIGERATION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (122 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND THE FACT THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) WAS SERVED WITH A NOTICE OF THIS APPLICATION AND FAILED TO INTERVENE OR APPEAR AT THE HEARING IN THIS MATTER, THE FACT THAT THE RESPONDENT TESTIFIED THAT THERE HAS BEEN NO CONTACT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) FOR A PERIOD IN EXCESS OF TWO YEARS PRIOR TO THE DATE OF THIS APPLICATION FOLLOWING AN UNSUCCESSFUL STRIKE, THE BOARD FINDS IN ALL THE CIRCUMSTANCES OF THIS CASE THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) HAS ABANDONED ITS BARGAINING RIGHTS AND THE BOARD THEREFORE DECLARES THAT IT NO LONGER REPRESENTS THE EMPLOYEES OF KEY-AIR CONDITIONING AND REFRIGERATION LTD. AT BARRIE, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

8791-64-R: LOCAL UNION #1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CADILLAC CONSTRUCTION ASSOCIATES (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN (7 EMPLOYEES IN THE UNIT)

8797-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (APPLICANT) V. TURN-BELL CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

8442-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF TECUMSEH (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE CLERK-TREASURER, THE ASSESSOR AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 702." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	5
NUMBER OF BALLOTS CAST	5
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

(AGREEMENT OF THE PARTIES)

8443-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TECUMSEH PUBLIC UTILITIES COMMISSION (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 702." (5 EMPLOYEES IN THE UNIT). (AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	5
NUMBER OF BALLOTS CAST	5
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

8546-64-R: BOOT AND SHOE WORKER'S UNION, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR-THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AND THE CANADIAN LABOUR CONGRESS (APPLICANT) V. SAVAGE SHOES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT NO. 5 IN FERGUS, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT FORELADY AND OFFICE AND SALES STAFF." (122 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		118
NUMBER OF BALLOTS CAST		118
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	63	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	54	

CERTIFIED SUBSEQUENT TO POST HEARING-VOTE

8464-64-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA (APPLICANT) V. EARL AULT LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS, PAINTERS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		32
NUMBER OF BALLOTS CAST		32
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

8475-64-R: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 540 (APPLICANT) V. NATIONAL PAPER GOODS LIMITED (RESPONDENT) V. CANADIAN PAPER WORKERS' UNION, No. 153 NCCL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (104 EMPLOYEES IN THE UNIT).

NUMBER ON REVISED VOTERS' LIST		96
NUMBER OF BALLOTS CAST		95
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	92	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2	



APPLICATION FOR CERTIFICATION DISMISSED:

NO VOTE CONDUCTED

7689-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WALTER E. SELCK OF CANADA LIMITED (RESPONDENT) (101 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 138 )

8404-64-R: S. W. FLEMING EMPLOYEES' ASSOCIATION (APPLICANT) V. S. W. FLEMING AND COMPANY LIMITED (RESPONDENT) V. SHEET METAL WORKERS INTERNATIONAL ASSOC. LOCAL 233 (INTERVENER) (71 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 144 )

8473-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EMANUEL PRODUCTS LIMITED (RESPONDENT) (179 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOLLOWING THE APPOINTMENT OF THE EXAMINER IN THIS MATTER, THE APPLICANT IN ITS LETTER DATED JUNE 16, 1964 REQUESTED LEAVE TO WITHDRAW THIS APPLICATION AND IN THESE CIRCUMSTANCES THIS APPLICATION IS ACCORDINGLY DISMISSED."

8480-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DIEOMATIC METAL PRODUCTS LIMITED (RESPONDENT). (57 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

8524-64-R: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264, TORONTO (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BAKERY AT 135 LAUGHTON AVENUE, TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK." (295 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE APPLICANT REQUESTED THAT A PRE-HEARING VOTE BE TAKEN. AT THE PRE-HEARING REPRESENTATION VOTE MEETING THE APPLICANT AND THE RESPONDENT AGREED TO THE BARGAINING UNIT STATED ABOVE.

THE BOARD IS SATISFIED ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.



IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION FOR A PRE-HEARING REPRESENTATION VOTE IS DENIED AND THIS APPLICATION IS ACCORDINGLY DISMISSED.

8565-64-R: INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

THE APPLICANT UNION REQUESTED CERTIFICATION FOR EMPLOYEES OF THE RESPONDENT COMPANY IN THE PROVINCE OF ONTARIO AND STATED THAT EMPLOYEES OF THE COMPANY WERE WORKING ON CONSTRUCTION SITES IN TORONTO, SAULT. STE. MARIE, TILBURY, OTTAWA (CRESTVIEW), LANCASTER AND CARDINAL. THE BOARD ISSUED FIVE DECISIONS THREE OF WHICH ARE GIVEN BELOW. THE OTHER TWO DECISIONS ARE SHOWN IN THIS REPORT UNDER THE HEADING "APPLICATION FOR CERTIFICATION GRANTED - NO VOTE CONDUCTED".

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT IN SO FAR AS THIS APPLICATION AFFECTS JOBS IN THE CITY OF TORONTO AND IN THE CITY OF SARNIA IT IS UNTIMELY BY REASON OF THE FACT THAT THE APPLICANT ALREADY HAS BARGAINING RIGHTS WITH RESPECT TO CONSTRUCTION LABOURERS AT THESE JOB SITES.

THE APPLICATION IS THEREFORE DISMISSED IN SO FAR AS IT AFFECTS JOBS IN THE CITY OF TORONTO AND IN THE CITY OF SARNIA." (88 EMPLOYEES IN TORONTO, 12 EMPLOYEES IN SARNIA).

8585-64-R: THE CANADIAN GUARDS ASSOCIATION (APPLICANT) V. BARNES INVESTIGATION BUREAU LIMITED (RESPONDENT). (73 EMPLOYEES)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE EVIDENCE HAVING INDICATED THAT THE APPLICANT HAS AS MEMBERS LESS THAN 45 PER CENT OF THE EMPLOYEES IN ANY BARGAINING UNIT WHICH THE BOARD WOULD FIND APPROPRIATE, AND THE APPLICANT HAVING REQUESTED LEAVE TO WITHDRAW, THIS APPLICATION IS DISMISSED."

8605-64-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA (APPLICANT) V. EINHORN PAINTERS (RESPONDENT).

ON JUNE 4, 1964 THE BOARD DETERMINED THE UNIT AS FOLLOWS AND ORDERED THAT A REPRESENTATION VOTE BE HELD OF EMPLOYEES IN THE BARGAINING UNIT.

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT ADVISED THE BOARD BY LETTER, DATED JUNE 19TH, 1964, THAT IT HAD ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT.

IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

8641-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES, AND IT'S LOCAL 216 (SAULT STE. MARIE BOARD OF EDUCATION) (APPLICANT) V. TOWNSHIP OF TARENTOROUS SEPARATE SCHOOL BOARD (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING FAILED TO APPEAR AND ADDUCE EVIDENCE IN SUPPORT OF ITS APPLICATION, THIS APPLICATION IS ACCORDINGLY DISMISSED."

8642-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF COUNTY OF GREY (RESPONDENT) (6 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 146).

8658-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1450, PETERBOROUGH, THE COUNTIES OF VICTORIA AND PETERBOROUGH, INCLUDING THE MUNICIPALITIES CONTAINED THEREIN (APPLICANT) V. A. W. HOMME LIMITED (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, AND ALSO FAILED TO FILE EVIDENCE OF MEMBERSHIP WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE THE APPLICATION IS THEREFORE DISMISSED."

8672-64-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PERTH PUBLIC UTILITIES COMMISSION (RESPONDENT). (14 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED BY THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND THAT IT HAS DECLARED PURSUANT TO THE PROVISION OF SECTION 89 OF THE LABOUR RELATIONS ACT THAT THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM.

IN VIEW OF THE ACTION OF THE RESPONDENT IN MAKING SUCH A DECLARATION, THE BOARD HAS NO JURISDICTION TO PROCESS THIS APPLICATION FURTHER AND THE APPLICATION IS ACCORDINGLY TERMINATED."

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

8227-64-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. TILLSONBURG SHOE Co. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT AT TILLSONBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT)

NUMBER ON REVISED VOTERS' LIST	56
NUMBER OF BALLOTS CAST	52
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28
NUMBER OF SPOILED BALLOTS	1

(SEE INDEXED ENDORSEMENT PAGE 142 )

8472-64-R: INTERNATIONAL UNION OF ELECTRICAL RADIO & MACHINE WORKERS AFFILIATED WITH AFL-CIO-CLC (APPLICANT) V. COPELAND REFRIGERATION OF CANADA, LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8108-63-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LTD. (RESPONDENT) (12 EMPLOYEES IN THE UNIT).

UNIT: "ALL DRIVER SALESMEN EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR."

NUMBER OF NAMES ON REVISED VOTERS' LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

8191-63-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (APPLICANT) V. FICKLING CARTAGE & STORAGE LTD. (RESPONDENT) (11 EMPLOYEES IN THE UNIT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES ON REVISED VOTERS' LIST	9
NUMBER OF BALLOTS CAST	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

8320-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PURITAN DAIRY PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT DUNNVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, MILK BAR EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		38
NUMBER OF BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST		35
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19	

8324-64-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. OTTAWA DOMESTIC PROVISIONERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."  
(22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		19
NUMBER OF BALLOTS CAST		19
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14	

8339-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF SARNIA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SCHOOL SYSTEM AT SARNIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL TEACHING STAFF AND OFFICE STAFF." (141 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		140
NUMBER OF BALLOTS CAST		139
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	56	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	74	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

8527-64-R: LOCAL UNION 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. JOHN OSTELL, CONSTRUCTION 256 FRANKLIN AVE., KITCHENER, ONTARIO (RESPONDENT) (5 EMPLOYEES IN THE UNIT).

8609-64-R: LOCAL UNION #1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. JAMES KEMP CONSTRUCTION LIMITED, 121 VANSITMART, HAMILTON, ONTARIO (RESPONDENT). (4 EMPLOYEES IN THE UNIT).



8617-64-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.  
THE HAMILTON COTTON COMPANY LIMITED (RESPONDENT) (3 EMPLOYEES).

8624-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL  
UNION 666, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND  
VICINITY (APPLICANT) V. W. K. WILSON & ASSOCIATES (RESPONDENT) (3 EMPLOYEES).

8673-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. SMITH AND STONE LIMITED  
(RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER).  
(505 EMPLOYEES).

8700-64-R: TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880,  
AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA (APPLICANT) V. CANADA BREAD COMPANY LIMITED (RESPONDENT)  
V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER). (37 EMPLOYEES).

8709-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNIVERSAL COOLER  
SUBSIDIARY OF KEY-AIR, DIVISION OF SNOW-BOY COOLER (RESPONDENT) (140 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS  
DISPOSED OF DURING JUNE

7908-63-R: THE EMPLOYEES OF CITY PARK APARTMENTS LIMITED REPRESENTED BY  
S. BELL (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204  
(RESPONDENT) (GRANTED) (19 EMPLOYEES).

(RE: CITY PARK APARTMENTS LIMITED,  
TORONTO, ONTARIO).

UNIT: "ALL EMPLOYEES OF CITY PARK APARTMENTS LIMITED AT THE APARTMENT BUILDING AT  
THE BLOCK AT THE SOUTH-WEST CORNER OF ALEXANDER AND CHURCH STREETS, TORONTO,  
SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS  
REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER ON REVISED VOTERS' LIST	19
NUMBER OF BALLOTS CAST	19
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	19

(SEE INDEXED ENDORSEMENT PAGE 147)

8040-63-R: PENINSULA READY-MIX AND SUPPLIES LTD. (APPLICANT) V. GENERAL TRUCK  
DRIVERS LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS (RESPONDENT). (DISMISSED) (6 EMPLOYEES).

(RE: PENINSULA READY MIX AND SUPPLIES LIMITED,  
BEAMSVILLE, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, WHICH IS BROUGHT BY THE EMPLOYER, IS EXPRESSED TO BE MADE UNDER SECTION 45 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT UNION CERTIFIED ON DECEMBER 12TH, 1962. AFTER A NUMBER OF UNSUCCESSFUL ATTEMPTS TO NEGOTIATE A COLLECTIVE AGREEMENT, CONCILIATION SERVICES WERE APPLIED FOR AND GRANTED BY THE BOARD. ON OR ABOUT NOVEMBER 26TH, 1963, THE PARTIES WERE NOTIFIED BY THE MINISTER, THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. WITHIN ONE WEEK FOLLOWING RECEIPTS OF THIS NOTIFICATION FROM THE MINISTER, THE UNION SET UP A PICKET LINE WHICH WAS SHORTLY THEREAFTER REMOVED. AS OF THE DATE OF THIS APPLICATION, WHICH WAS MADE ON MARCH 11TH, 1963, NO FURTHER ACTION HAD BEEN TAKEN BY THE UNION NOR HAD ANY ATTEMPTS BEEN MADE BY EITHER OF THE PARTIES TO RE-OPEN NEGOTIATIONS FOR A COLLECTIVE AGREEMENT.

WHILE THE RESPONDENT UNION FILED A REPLY IN THESE PROCEEDINGS NO ONE APPEARED ON ITS BEHALF AT THE HEARING.

IN SUPPORT OF ITS APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, THE EMPLOYER FILED TYPEWRITTEN DOCUMENTS WHICH IT ALLEGED BEAR THE SIGNATURES OF EMPLOYEES IN THE BARGAINING UNIT. THESE DOCUMENTS PURPORT TO STATE THAT THE SIGNATORY NO LONGER WISHES TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. NO LIST OF THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION WAS FILED BY THE APPLICANT EMPLOYER. MOREOVER, EVEN ASSUMING THAT THE BOARD COULD OR WOULD ACCEPT SUCH DOCUMENTS FILED BY THE EMPLOYER THERE WAS NO VICE VOCE EVIDENCE TENDERED OR CALLED IN SUPPORT OF THE DOCUMENTS IN QUESTION RELATING TO CIRCUMSTANCES SURROUNDING THEIR PREPARATION AND CIRCULATION.

PLAINLY, OF COURSE, THE APPLICATION IN THIS CASE DOES NOT FALL WITHIN THE PROVISION OF SECTION 45.

EVEN ASSUMING THAT THE BOARD HAS JURISDICTION TO HEAR THIS APPLICATION UNDER SECTION 79 (1) (SEE THE GENAIRE LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-1959 TRANSFER BINDER, ¶16,101, ¶15,188, ¶15,216, ¶16,140) WE ARE UNABLE TO ACCEPT THE DOCUMENTS IN QUESTION AS CONSTITUTING RELIABLE OR SATISFACTORY EVIDENCE THAT THE EMPLOYEES OR AT LEAST 50 PER CENT OF THEM NO LONGER WISH TO BE REPRESENTED IN COLLECTIVE BARGAINING BY THE RESPONDENT UNION.

8194-63-R: WILI SCHOLL (APPLICANT) V. THE BUILDING SERVICE EMPLOYES INT. UNION A.F.L. C.I.O. C.L.C. LOC. 204 (RESPONDENT). (WITHDRAWN). (18 EMPLOYEES).

(RE: CITY PARK APARTMENTS LTD.,  
TORONTO, ONTARIO).

8355-64-R: JOHN SIMONS (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (GRANTED). ( 12 EMPLOYEES)

(RE: LONDON FURNITURE COMPANY LIMITED,  
LONDON, ONTARIO).

UNIT: "ALL TRUCK DRIVERS AND WAREHOUSEMEN OF LONDON FURNITURE COMPANY LIMITED AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

NUMBER OF NAMES ON REVISED VOTERS' LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11

8421-64-R: JOHN STAMLER (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. TRENT GLASS LIMITED (INTERVENER). (GRANTED). ( 5 EMPLOYEES).

(RE: TRENT GLASS LIMITED,  
PETERBOROUGH, ONTARIO.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO  
TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT  
AND THE RESPONDENT HAVING ADVISED THE BOARD BY  
LETTER DATED JUNE 4TH, 1964 THAT IT NO LONGER WISHES  
TO REPRESENT THE APPLICANT OR BE A BARGAINING AGENT  
THEREFOR, THE BOARD FINDS THAT THE RESPONDENT HAS  
ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE  
EMPLOYEES OF TRENT GLASS LIMITED FOR WHOM IT HAS  
HERETOFORE BEEN THE BARGAINING AGENT."

8440-64-R: STARK TRUCK SERVICE (LONDON) LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, (RESPONDENT) (DISMISSED). (10 EMPLOYEES).

(RE: STARK TRUCK SERVICE (LONDON) LIMITED,  
LONDON, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 149)

8535-64-R: VAIL & SHEPPARD, CARTAGE (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED). (35 EMPLOYEES).

(RE: VAIL & SHEPPARD, CARTAGE,  
TORONTO, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 151).

8556-64-R: ROSS SIMON (APPLICANT) V. LOCAL NUMBER 1606, TEXTILE WORKERS UNION OF AMERICA (RESPONDENT) V. DAWBARN (CANADA) LIMITED (INTERVENER). (DISMISSED). (9 EMPLOYEES).

(RE: DAWBARN (CANADA) LIMITED,  
BRANTFORD, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THE FACT THAT THE APPLICATION HEREIN ERRONEOUSLY NAMES THE RESPONDENT AS LOCAL 1606 RATHER THAN TEXTILE WORKERS UNION OF AMERICA, WHICH IS THE BARGAINING AGENT FOR THE EMPLOYEES IN QUESTION, THIS APPLICATION IS DISMISSED.

8586-64-R: HENRY F. DARRELL (APPLICANT) V. LOCAL 540, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA WITH HEADQUARTERS IN HAWKINS COUNTY, TENNESSEE, U.S.A. (RESPONDENT) V. CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION) (INTERVENER). (DISMISSED) (80 EMPLOYEES).

(RE: CONTINENTAL CAN COMPANY OF CANADA LIMITED, (PAPER DIVISION),  
HAMILTON, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 152 ).

8588-64-R: THE WAR AMPUTATIONS OF CANADA, HAMILTON DISTRICT BRANCH, 456 MOUNTAIN PARK DR., HAMILTON, ONTARIO (APPLICANT) V. HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197 (RESPONDENT). (GRANTED) (2 EMPLOYEES).

(RE: THE WAR AMPUTATIONS OF CANADA,  
HAMILTON, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON THE 9TH DAY OF MARCH, 1964.

THE APPLICANT, ON THE 26TH DAY OF MAY, 1964, APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT AND THE RESPONDENT WAS DULY SERVED WITH NOTICE OF THESE PROCEEDINGS.

THE RESPONDENT FAILED TO FILE A REPLY TO THIS APPLICATION AND WAS NOT REPRESENTED AT THE HEARING IN THIS MATTER.

HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT, THE BOARD FINDS THAT THE RESPONDENT FAILED TO GIVE THE APPLICANT NOTICE UNDER SECTION 11 OF THE ACT WITHIN 60 DAYS FOLLOWING CERTIFICATION AND ACCORDINGLY PURSUANT TO THE PROVISIONS OF SECTION 45(1) OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE WAR AMPUTATIONS OF CANADA, HAMILTON DISTRICT BRANCH, AT HAMILTON, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."



8627-64-R: CHARLES BELL ALLAN (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO:CLC (RESPONDENT). (GRANTED) (36 EMPLOYEES).

(RE: K.M.A. CATERERS LIMITED,  
METROPOLITAN TORONTO, ONTARIO.).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED JUNE 3RD, 1964, THAT IT NO LONGER CLAIMS TO REPRESENT ANY OF THE EMPLOYEES AFFECTED, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF K. M. A. CATERERS LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

8659-64-R: MURRAY ANTHONY (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) (GRANTED) ( 3 EMPLOYEES).

(RE: FLEET-LINE PRODUCTS LIMITED,  
WATERFORD, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY A LETTER DATED JUNE 8TH, 1964, THAT IT DOES NOT INTEND TO OPPOSE THE APPLICATION, AND DOES NOT CLAIM TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD FINDS THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF FLEET-LINE PRODUCTS LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

8680-64-R: DOROTHY HALL (APPLICANT) V. WELDERS, PUBLIC GARAGE EMPLOYEES, MOTOR MECHANICS AND ALLIED WORKERS LOCAL UNION 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED). (15 EMPLOYEES).

(RE: ISLINGTON CHRYSLER PLYMOUTH LIMITED,  
METROPOLITAN TORONTO, ONTARIO).

8713-64-R: ROSS SIMON (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, CLC., AFL-CIO (RESPONDENT) V. DAWBARN (CANADA) LIMITED (INTERVENER). (DISMISSED) (8 EMPLOYEES).

(RE: DAWBARN (CANADA) LIMITED,  
BRANTFORD, ONTARIO.).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE IS AN ONUS ON THE APPLICANT TO SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE



UNION PURSUANT TO THE PROVISIONS OF SECTION 43(2) OF THE  
LABOUR RELATIONS ACT.

IN THE INSTANT CASE THE BOARD FINDS THAT THE  
APPLICANT HAS FAILED TO SATISFY IT THAT NOT LESS THAN  
FIFTY PER CENT OF THE EMPLOYEES OF DAWBARN (CANADA)  
LIMITED IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED  
IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY  
THE RESPONDENT."

8722-64-R: W.O. BRIGHT (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA (RESPONDENT)

8723-64-R: K. M. BEATTIE (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA  
(RESPONDENT).

8724-64-R: E.J. BLAKE (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA (RESPONDENT).

8725-64-R: E. C. STOKES (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA  
(RESPONDENT).

8726-64-R: K. A. ROSZEL (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA  
(RESPONDENT).

8727-64-R: E.E. DANIELS (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA  
(RESPONDENT).

8728-64-R: G. J. TIFFIN (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA  
(RESPONDENT).

(RE: AIR LIQUIDE (CANADIAN LIQUID AIR LIMITED),  
LONDON, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND  
THEY ARE HEREBY CONSOLIDATED.

THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE  
THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT  
HAVING ADVISED THE BOARD BY LETTER DATED JUNE 15TH, 1964,  
THAT IT DOES NOT CLAIM TO REPRESENT THE EMPLOYEES IN THE  
BARGAINING UNIT, THE BOARD FINDS THAT THE RESPONDENT NO  
LONGER REPRESENTS THE EMPLOYEES OF AIR LIQUIDE (CANADIAN  
LIQUID AIR LIMITED) FOR WHOM IT HAS HERETOFORE BEEN THE  
BARGAINING AGENT."

APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION  
DISPOSED OF DURING JUNE

8550-64-R: LOCAL 444 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. WALKER METAL  
PRODUCTS LIMITED (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF TRANSFER OF JURISDICTION, THE SUCCESSOR TO LOCAL 195 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN WALKER METAL PRODUCTS LIMITED AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND LOCAL 195 EFFECTIVE MAY 18TH, 1962 UNTIL FEBRUARY 15TH, 1964, WITH YEAR TO YEAR RENEWAL SUBJECT TO NOTICE.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT IS THE SUCCESSOR TO LOCAL 195 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), WHICH WAS A PARTY TO THE AGREEMENT REFERRED TO WITH THE RESPONDENT WILL ISSUE."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

8553-64-U: ALBERT SALAMIN, CARRYING ON BUSINESS AS ALPS CONSTRUCTION (APPLICANT) V. FREDERICK COLEMAN ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 153 )

8554-64-U: ALBERT SALAMIN, CARRYING ON BUSINESS AS ALPS CONSTRUCTION (APPLICANT) V. THE BRICKLAYERS' UNION No. 2, AND THE STONE MASONS UNION No. 26 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' PLASTERERS' INTERNATIONAL UNION OF AMERICA) (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS' INTERNATIONAL UNION OF AMERICA) CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF CERTAIN EMPLOYEES OF THE APPLICANT.

THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM THE 1ST DAY OF MAY, 1963 UNTIL THE 30TH DAY OF APRIL, 1965 AND THIS COLLECTIVE AGREEMENT WAS IN EFFECT AND BINDING UPON THE PARTIES. THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED WERE EMPLOYED AT THE ST. AGATHA SCHOOL JOB SITE AT CATHEDRAL BLUFF DRIVE IN THE TOWNSHIP OF SCARBOROUGH, WERE MEMBERS OF THE BRICKLAYERS' UNION No. 2 AND WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AT THE RELEVANT TIMES.

THE EVIDENCE OF THE APPLICANT ALBERT SALAMIN WHO CARRIES ON BUSINESS AS ALPS CONSTRUCTION IS THAT IT IS HIS USUAL PRACTICE AND THE PRACTICE OF OTHER CONTRACTORS TO HAVE 10" BLOCKS LAID BY ONE BRICKLAYER. BLOCKS 12" OR OVER REQUIRE TWO BRICKLAYERS.

THIS EVIDENCE IS SUPPORTED BY CLAUSE 25 OF THE COLLECTIVE AGREEMENT WHICH READS AS FOLLOWS:

"IT IS AGREED THAT WHEN STANDARD AGGREGATE CONCRETE BLOCKS ARE USED HAVING A WIDTH OF (12") TWELVE INCHES OR OVER, SAME WILL BE LAID BY USING TWO BRICKLAYERS. THIS SHALL NOT HOWEVER APPLY TO LIGHT WEIGHT AGGREGATE BLOCKS SUCH AS CINDER, HAYDITE, OR SLAG."

IN FEBRUARY 1964 (DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES) THE RESPONDENT AMENDED ITS WORK RULES AS CONTAINED IN ITS CONSTITUTION AND BY-LAWS BY PROVIDING THAT TWO BRICKLAYERS MUST WORK IN PAIRS TO LAY 10" BLOCKS AND IF THEY FAILED TO COMPLY WITH THIS NEW WORK RULE THEY SHALL BE FINED NOT LESS THAN \$10.00. THIS NEW WORK RULE IS CONTAINED IN ARTICLE XVI, SECTION 10, OF THE RESPONDENT BY-LAWS.

WE FIND ON THE EVIDENCE BEFORE US THAT IN THE EARLY AFTERNOON OF MAY 19TH DONALD WILLIAMS THE BUSINESS AGENT OF THE RESPONDENT ATTENDED ON THE JOB SITE AT ST. AGATHA SCHOOL AND INFORMED BOTH ALBERT SALAMIN WHO CARRIES ON BUSINESS AS ALPS CONSTRUCTION AND FRED COLEMAN, ONE OF THE BRICKLAYERS EMPLOYED ON THE SITE WHO IS ALSO A SHOP STEWARD OF THE RESPONDENT UNION, THAT IN COMPLIANCE WITH THE NEW WORK RULES ADOPTED BY THE RESPONDENT TWO BRICKLAYERS WOULD BE REQUIRED TO LAY 10" CONCRETE BLOCKS. ON MAY 20TH COLEMAN REFUSED SALAMIN'S REQUEST THAT HE LAY 10" BLOCKS BY HIMSELF. ON MAY 21ST ALL OF THE BRICKLAYERS ON THE JOB REFUSED TO LAY 10" BLOCKS UNLESS THEY WERE PERMITTED TO WORK IN PAIRS. NO 10" BLOCKS HAVE BEEN LAID BY ANY OF THE BRICKLAYERS CONCERNED SINCE THAT TIME.

HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT THE EMPLOYEES CONCERNED REFUSED TO LAY 10" BLOCKS BECAUSE OF INSTRUCTIONS EMANATING FROM WILLIAMS THEIR BUSINESS AGENT WHO REPRESENTS THE RESPONDENT UNION.

THE BOARD FINDS THAT THE REFUSAL BY THE EMPLOYEES IN QUESTION FALLS WITHIN THE DEFINITION OF "STRIKE" AS DEFINED BY SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT IN THAT ALL THE EMPLOYEES IN QUESTION REFUSED TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING WITH THE DESIGN TO RESTRICT OR LIMIT THE OUTPUT OF THE APPLICANT.

THE STRIKE ENGAGED IN BY THE EMPLOYEES WAS ENGAGED IN DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT COVERING THEM AND IS THEREFORE UNLAWFUL.

THE RESPONDENT, BRICKLAYERS' UNION NO. 2, ATTEMPTED TO UNILATERALLY ALTER THE TERMS OR CONDITIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE BRICKLAYERS' UNION NO. 2 AND THE APPLICANT BY AMENDING ITS BY-LAWS. WHEN THE BY-LAWS WERE ENFORCED BY THE RESPONDENT THE RESULT WAS THE IMPOSITION OF NEW WORK RULES AND CONDITIONS CONTRARY TO THE APPLICANT'S USUAL PRACTICE AND CONTRARY TO THE INTENT AND PURPOSE OF THE COLLECTIVE AGREEMENT.

WE CAN ONLY CONCLUDE FROM THE EVIDENCE IN THIS CASE THAT THE BRICKLAYERS' UNION No. 2 CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANT AT THE ST. AGATHA SCHOOL JOB SITE ON OR ABOUT MAY 21ST, 1964. TO FIND OTHERWISE WOULD ALLOW EITHER PARTY TO A COLLECTIVE AGREEMENT TO UNILATERALLY CHANGE THE TERMS, CONDITIONS OR WORK RULES PROVIDED FOR IN A COLLECTIVE AGREEMENT BY MERELY AMENDING ITS OWN BY-LAWS (SEE LEADER MASONRY & FORMING LIMITED CASE, BOARD FILE No. 8603-64-U).

THE RESPONDENT HAVING SHOWN A COMPLETE DISREGARD FOR THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND THE LABOUR RELATIONS ACT, THE BOARD IS SATISFIED THAT THIS IS A CASE IN WHICH IT SHOULD EXERCISE ITS DISCRETION AND ISSUE THE DECLARATION SOUGHT BY THE APPLICANT. THE BOARD, ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT DECLARES THAT THE RESPONDENT, THE BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS' INTERNATIONAL UNION OF AMERICA), DID ON AND AFTER MAY 21ST, 1964 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT AT THE ST. AGATHA SCHOOL JOB SITE AT CATHEDRAL BLUFF DRIVE IN THE TOWNSHIP OF SCARBOROUGH, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT."

8601-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. THE BRICKLAYERS' UNION No. 2, AND THE STONE MASONS UNION No. 26 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' PLASTERERS' INTERNATIONAL UNION OF AMERICA (RESPONDENTS) (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THE RESULT IN THIS CASE SHOULD FLOW FROM THE RESULT IN THE APPLICATION INVOLVING THE SAME PARTIES IN BOARD FILE 8603-64-U, AND PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT, THE BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' PLASTERERS' INTERNATIONAL UNION OF AMERICA) DID ON AND AFTER MAY 26TH, 1964 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT AT THE MIDLAND AVENUE, TOWNSHIP OF SCARBOROUGH JOB SITE, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT."

8602-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. CHARLES MEEK ET AL (RESPONDENTS) (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 155 ).

8603-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. THE BRICKLAYERS' UNION No. 2 AND THE STONE MASONS UNION No. 26 OF TORONTO ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' PLASTERERS' INTERNATIONAL UNION OF AMERICA) (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 156 ).



8604-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT V. ALOIS BACHMAYER ET AL (RESPONDENTS) (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 155 ).

8621-64-U: APPLIED INSULATION CO. LTD. (APPLICANT) V. INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 95 (RESPONDENT). (WITHDRAWN).

8681-64-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. THE BRICKLAYERS' AND MASONS' UNION LOCAL NO. 1, ONTARIO OF THE CITY OF HAMILTON (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT BRICKLAYERS' AND MASONS' UNION LOCAL NO. 1, ONTARIO, OF THE CITY OF HAMILTON CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF CERTAIN EMPLOYEES OF THE APPLICANT PIGOTT CONSTRUCTION COMPANY LIMITED.

THE GENERAL CONTRACTORS' SECTION AND THE MASONRY CONTRACTORS' SECTION OF THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS' EXCHANGE (HEREINAFTER REFERRED TO AS THE ASSOCIATION) AND THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE ASSOCIATION AGREEMENT) EFFECTIVE FROM MAY 14TH, 1962 TO APRIL 30TH, 1964. THE MEMBERS OF THE ASSOCIATION BOUND BY THE AGREEMENT RECOGNIZED THE RESPONDENT AS THE SOLE BARGAINING AGENT FOR THE BRICKLAYERS AND STONEMASONS IN THE COUNTY OF WENTWORTH AND CERTAIN PORTIONS OF THE COUNTIES OF HALTON, LINCOLN AND HALDIMAND. AT THE TIME THE ASSOCIATION AGREEMENT WAS ENTERED INTO BY THE PARTIES THE APPLICANT WAS A MEMBER OF THE GENERAL CONTRACTORS' SECTION OF THE ASSOCIATION AND WAS BOUND BY THE AGREEMENT.

THE APPLICANT, SIX INTERNATIONAL TRADE UNIONS (INCLUDING THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA) AND A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS (COMPOSED OF THE SIX INTERNATIONAL TRADE UNIONS) SUBSEQUENTLY ENTERED INTO A COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE COUNCIL AGREEMENT) EFFECTIVE FROM SEPTEMBER 18TH, 1963 TO OCTOBER 31ST, 1965. BY THE TERMS OF THE AGREEMENT THE APPLICANT RECOGNIZES THE COUNCIL AS EXCLUSIVE BARGAINING AGENT FOR ALL ITS EMPLOYEES EMPLOYED ON CONSTRUCTION PROJECTS WITHIN THE PROVINCE OF ONTARIO FOR WHOM THE COUNCIL IS AUTHORIZED TO BARGAIN. THE COUNCIL AGREEMENT PURPORTS TO BE BINDING UPON THE RESPONDENT LOCAL NO.1 AS WELL AS THE PARENT, BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA.

BY A RESOLUTION DATED JANUARY 9TH, 1964 THE EXECUTIVE COUNCIL OF THE ASSOCIATION CANCELLED THE MEMBERSHIP OF THE APPLICANT IN THE ASSOCIATION BECAUSE OF THE ACTION OF THE APPLICANT IN SIGNING THE COUNCIL AGREEMENT COVERING ALL OF THE PROVINCE OF ONTARIO.

IT IS NOT DISPUTED THAT ON AND AFTER JUNE 1ST, 1964 THE EMPLOYEES OF THE MEMBERS OF THE ASSOCIATION, FOR WHOM THE RESPONDENT IS THE BARGAINING AGENT, ENGAGED IN A LAWFUL STRIKE ON THE CONSTRUCTION PROJECTS OF THEIR EMPLOYERS IN THE HAMILTON AREA AND THAT THIS STRIKE WAS CALLED OR AUTHORIZED BY THE RESPONDENT.



THE EMPLOYEES OF THE APPLICANT, HOWEVER, FOR WHOM THE RESPONDENT IS BARGAINING AGENT, ALSO ENGAGED IN A STRIKE ON THE CONSTRUCTION PROJECTS OF THE APPLICANT IN THE HAMILTON AREA WHICH WAS CALLED OR AUTHORIZED BY THE RESPONDENT. THE PRINCIPAL ISSUES TO BE DETERMINED BY THE BOARD IN THIS MATTER IS WHETHER OR NOT THE STRIKE ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

LET US ASSUME FOR PRESENT PURPOSES THAT, NOTWITHSTANDING THE SUBSEQUENT COUNCIL AGREEMENT, THE ASSOCIATION AGREEMENT IS THE COLLECTIVE AGREEMENT WHICH IS BINDING UPON THE APPLICANT AND THE RESPONDENT. ALTHOUGH THE APPLICANT CEASED TO BE A MEMBER OF THE ASSOCIATION ON JANUARY 9TH, 1964, NEVERTHELESS, BY THE PROVISIONS OF SECTION 38(1) OF THE LABOUR RELATIONS ACT THE APPLICANT CONTINUED TO BE BOUND BY THE "ASSOCIATION AGREEMENT" FOR THE REMAINDER OF THE TERM OF OPERATION OF THE AGREEMENT. HAVING REGARD TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT, THE STRIKE AUTHORIZED BY THE RESPONDENT AND ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

TURNING NOW TO THE COUNCIL AGREEMENT, LET US ASSUME FOR PRESENT PURPOSES THAT, NOTWITHSTANDING THE PRIOR ASSOCIATION AGREEMENT, THE COUNCIL AGREEMENT IS THE COLLECTIVE AGREEMENT WHICH IS BINDING UPON THE APPLICANT AND THE RESPONDENT. ONE OF THE TERMS OF THE COUNCIL AGREEMENT SPECIFICALLY PROVIDES THAT SHOULD LOCAL NEGOTIATIONS RESULT IN A STRIKE WITH RESPECT TO CONTRACTORS IN THE AREA, THAT THERE SHALL BE NO WORK STOPPAGE ON THE APPLICANT'S PROJECTS BY ANY UNION BOUND BY THE AGREEMENT. THE RESPONDENT HAVING VIOLATED THIS PROVISION DURING THE CURRENCY OF THE AGREEMENT, THE STRIKE AUTHORIZED BY IT AND ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

SINCE THE STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL, REGARDLESS OF WHETHER THE APPLICANT AND THE RESPONDENT ARE BOUND BY THE ASSOCIATION AGREEMENT OR THE COUNCIL AGREEMENT, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY FINDING WITH RESPECT TO THE VALIDITY OR EFFECT OF THE LATTER COLLECTIVE AGREEMENT.

IN ALL THE CIRCUMSTANCES THE BOARD IS SATISFIED THAT THIS IS A CASE IN WHICH IN ITS DISCRETION THE BOARD SHOULD ISSUE THE DECLARATION SOUGHT BY THE APPLICANT. THE BOARD, ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT DECLARES THAT THE RESPONDENT, BRICKLAYERS' AND MASONS' UNION, LOCAL NO. 1, ONTARIO, OF THE CITY OF HAMILTON DID ON AND AFTER JUNE 1ST, 1964 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT ON ITS CONSTRUCTION PROJECTS IN THE HAMILTON AREA, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

8703-64-U: DOYLE HINTON LIMITED (APPLICANT) V. GINO FRANCHINI ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 153 )

8716-64-U: CANADIAN COMSTOCK COMPANY LIMITED (APPLICANT) V. JOSEPH LALONDE ET AL (RESPONDENTS) (WITHDRAWN).

8748-64-U: GENERAL PRINTERS LIMITED (APPLICANT) V. DENNIS GARDINER ET AL (RESPONDENTS). (WITHDRAWN)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

8390-64-U: THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS A.F. OF L., C.I.O.,  
LOCAL 231 (APPLICANT) v. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT).  
(GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IT IS OUR OPINION THAT THIS CASE RAISES QUESTION OF LAW OF CONSIDERABLE IMPORTANCE WHICH, FOR THEIR FUTURE GUIDANCE, IT MAY BE OF INTEREST TO THE PARTIES TO HAVE DETERMINED ON THE MERITS BY A COURT. WE ARE SATISFIED THAT THE APPLICANT HAS PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN A PRIMA FACIE CASE, ASSUMING THE VALIDITY OF REASONABLY ARGUABLE QUESTIONS OF LAW ADVANCED BY IT IN SUPPORT OF ITS POSITION (SEE THE HYDRO ELECTRIC POWER COMMISSION CASE, BOARD FILE NO. 7229-63-U). IN SUCH CIRCUMSTANCES, ANY OPINION WHICH WE MAY ENTERTAIN AS TO THE RELATIVE MERITS OF THE ARGUMENTS IN LAW ADVANCED BY THE PARTIES IN THESE PROCEEDINGS IS IRRELEVANT.

THE BOARD, THEREFORE, CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED, NAMELY, THAT AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED DID, ON OR ABOUT THE 8TH DAY OF APRIL, 1964, SEEK BY THREAT OF DISMISSAL TO COMPEL ITS EMPLOYEES, W. MORRIS, R. JENKINS, GEORGE ENATOW, STAN SLEIVA, JOSEPH VISCONTI, GEORGE NEIL AND ROBERT HONEY TO CEASE TO EXERCISE THEIR RIGHTS TO PARTICIPATE IN A LAWFUL STRIKE UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 50 (c) OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS OF CONSENT WILL ISSUE."

BOARD MEMBER M. C. HAY DISSENTED AND SAID:

"I DISSENT. IN MY CONSIDERED OPINION THE APPLICANT FAILED TO ADDUCE SUFFICIENT EVIDENCE OF THE ESSENTIAL INGREDIENTS OF THE OFFENCE CHARGED TO ESTABLISH A PRIMA FACIE CASE UPON WHICH A MAGISTRATE MIGHT FIND THAT THE RESPONDENT IS PROBABLY GUILTY OF SUCH OFFENCE. ACCORDINGLY, I WOULD DISMISS THE APPLICATION."

8622-64-U: APPLIED INSULATION CO. LTD. (APPLICANT) v. INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 95 AND AL KIRTON ET AL (RESPONDENTS) (WITHDRAWN).

8694-64-U: G. & S. FOUNDATION COMPANY (APPLICANT) v. CHARLES DUNCAN (RESPONDENT). (WITHDRAWN).

8714-64-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (AFL-CIO-CLC) (APPLICANT) v. ZEPPIERI BROS. CARPENTRY (RESPONDENT) (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING,  
THIS APPLICATION IS DISMISSED."

8715-64-U: CANADIAN COMSTOCK COMPANY LIMITED (APPLICANT) V. JOSEPH LALONDE  
ET AL (RESPONDENTS). (WITHDRAWN).

8719-64-U: DOYLE HINTON LIMITED (APPLICANT) V. GINO FRANCHINI ET AL  
(RESPONDENTS). (WITHDRAWN).

8741-64-U: RETAIL CLERKS LOCAL 409 (APPLICANT) V. CHAPPLES LIMITED (RESPONDENT)  
(WITHDRAWN).

8747-64-U: GENERAL PRINTERS LIMITED (APPLICANT) V. DENNIS GARDINER ET AL  
(RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING JUNE

8209-63-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. THROUGH  
IT'S LOCAL #28 (COMPLAINANT) V. ALLOY PLATERS LIMITED (RESPONDENT).

8353-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. KENILWORTH MINES  
LIMITED (RESPONDENT).

8441-64-U: JAMES THOMAS WAINMAN (COMPLAINANT) V. ONTARIO PAPER CO. LTD.  
(RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 158 )

8623-64-U: HOTELS, CLUBS, RESTAURANTS AND TAVERNS EMPLOYEES UNION, LOCAL 261.  
AFFILIATED WITH A.F. OF L. C.I.O. AND C.L.C. (COMPLAINANT) V. THE BRUCE  
MACDONALD MOTOR HOTEL (RESPONDENT).

8647-64-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. EMANUEL  
PRODUCTS LIMITED (RESPONDENT).

8697-64-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. MAX FACTOR  
AND COMPANY (RESPONDENT).

8734-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. DIEBOLD OF CANADA  
LIMITED (RESPONDENT).

8780-64-U: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDER'S INTERNATIONAL UNION,  
LOCAL 197 (COMPLAINANT) V. TERMINAL HOTEL (RESPONDENT).

8800-64-U: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, LOCAL 990 (COMPLAINANT) V. WESTERN IRON & METAL COMPANY  
(FORT WILLIAM) LIMITED (RESPONDENT).

CERTIFICATION INDEXED ENDORSEMENTS

7689-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. WALTER E. SELCK OF CANADA LIMITED (RESPONDENT) (101 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS INVESTIGATED AND CONDUCTED AN INQUIRY INTO ALLEGATIONS THAT THREE EMPLOYEES, JOSEPH GAUDET, LUCETTE CHARBONNEAU AND VITO ARGENTIERI, ON WHOSE BEHALF COMBINATION APPLICATION CARDS AND RECEIPTS WERE FILED OF \$1.00, DID NOT PAY THE ONE DOLLAR FEE, THE PAYMENT OF WHICH EACH OF THE RECEIPTS PURPORTS TO ACKNOWLEDGE. THE BOARD HAS ALSO INQUIRED INTO CERTAIN OTHER ALLEGATIONS TO THE EFFECT THAT TWO EMPLOYEES WERE THREATENED WITH LOSS OF THEIR EMPLOYMENT IF THEY DID NOT SIGN FOR THE APPLICANT UNION.

IT IS CLEAR ON THE EVIDENCE THAT LUCETTE CHARBONNEAU AND VITO ARGENTIERI DID IN FACT PAY THE SUM OF \$1.00 ACKNOWLEDGED BY THE RECEIPT FILED ON THEIR BEHALF. CONTRARY TO THE INFORMATION CONTAINED IN THE RECEIPT AND FORM 9, HOWEVER, NO PAYMENT HAD BEEN MADE BY JOSEPH GAUDET WHEN THE RECEIPT PURPORTING TO EVIDENCE THE PAYMENT OF \$1.00 BY HIM, AND FORM 9 WERE FILED WITH THE BOARD. IT WAS NOT UNTIL AFTER THE FIRST HEARING OF THE APPLICATION AND AFTER THE BOARD'S INVESTIGATOR HAD INTERVIEWED MR. GAUDET TO ASCERTAIN WHETHER THE PAYMENT HAD BEEN MADE, THAT IT WAS THEN COLLECTED FROM GAUDET.

THE UNION'S ORGANIZATIONAL CAMPAIGN IN THIS CASE WAS FOR ALL INTENTS AND PURPOSES UNDER THE SOLE DIRECTION OF A RANK-AND-FILE EMPLOYEE, MRS. ANGEL, WHO WAS NOT AN OFFICIAL OR AGENT OF THE UNION. SHE PERSONALLY CONDUCTED AND/OR DIRECTED THE CAMPAIGN AND TOOK IT UPON HERSELF TO COLLECT OR TO SUPERVISE THE COLLECTION OF ALL OF THE INITIATION FEES. SHE HERSELF SIGNED UP AND SUBSCRIBED HER SIGNATURE AS COLLECTOR TO ALL BUT 3 OF THE 62 COMBINATION APPLICATIONS AND RECEIPTS FILED WITH THE BOARD BY THE UNION AS EVIDENCE OF MEMBERSHIP. IT IS NOT WITHOUT INTEREST ALSO THAT SHE DID MUCH OF HER WORK IN CONNECTION WITH THE SOLICITATION AND SIGNING UP OF MEMBERS AND COLLECTION OF FEES DURING AN EXTENDED LEAVE OF ABSENCE FROM WORK.

IT IS MANIFEST FROM HER TESTIMONY, THAT MRS. ANGEL DID NOT GET THE INITIATION FEE IN EVERY CASE ON THE SAME DAY AS THE APPLICANT FOR MEMBERSHIP WAS ASKED TO AND DID SIGN THE RECEIPT PORTION OF THE CARD PURPORTING TO CERTIFY THAT HE HAD PAID THE INITIATION FEE THEREIN STATED OF \$1.00. THE CARDS FILED, HOWEVER, ALL PURPORT TO EVIDENCE THE FACT THAT THE INITIATION FEE WAS RECEIVED BY HER ON THE SAME DATE AS THE CARD AND RECEIPT PORTION THEREOF WAS SIGNED BY THE APPLICANT FOR MEMBERSHIP AND THE COLLECTOR. IT IS PLAIN, THEREFORE, THAT THE INFORMATION CONTAINED ON SOME OF THE CARDS AS TO THE DATE OF PAYMENT OF THE INITIATION FEE IS INCORRECT AND THAT IT WAS WELL KNOWN TO MRS. ANGEL TO BE INCORRECT AT THE TIME WHEN SHE SIGNED THESE CARDS AS COLLECTOR.



ACCORDING TO THE EVIDENCE OF FRANK FRATILLA, JOSEPH GAUDET SIGNED THE CARD SUBMITTED FOR HIM ON JANUARY 30TH, 1964. FRATILLA'S EVIDENCE ESTABLISHES THAT ON THIS DATE GAUDET ALSO COUNTERSIGNED THE RECEIPT PORTION OF THE CARD PURPORTING TO CERTIFY THAT HE HAD ON THAT DATE PAID THE INITIATION FEE OF \$1.00. JANUARY 30TH, 1964, ALSO APPEARS AS THE DATE WHEN MRS. ANGEL SIGNED THE RECEIPT AS RECEIVING THE INITIATION FEE OF \$1.00. SHE CLEARLY ADMITS, HOWEVER, THAT SHE DID NOT APPROACH GAUDET FOR NOR DID SHE RECEIVE THIS PAYMENT FROM HIM UNTIL AFTER THE BOARD'S INVESTIGATING OFFICER HAD INTERVIEWED HIM TO DETERMINE WHETHER HE HAD IN FACT PAID THE \$1.00. SHE ALSO ADMITS THAT WHEN SHE GOT GAUDET'S CARD FROM FRATILLA, SHE WAS WELL AWARE OF THE FACT THAT GAUDET HAD NOT THEN PAID AND THAT SHE MUST ALSO HAVE KNOWN THIS WHEN SHE SIGNED HIS CARD AS COLLECTOR. THE EXPLANATION WHICH SHE GIVES IS THAT SHE SUBMITTED MR. GAUDET'S CARD IN ERROR. SHE STATES THAT SHE PUT THE CARD ASIDE AS ONE FOR WHICH SHE HAD NOT RECEIVED PAYMENT BUT THAT IT SOMEHOW GOT MIXED UP WITH THE OTHERS AND THAT IT WAS ONLY THROUGH INADVERTENCE THAT SHE SUBMITTED IT ALONG WITH THE OTHER CARDS TO THE UNION. AT ANOTHER POINT IN HER TESTIMONY SHE STATED THAT SHE MUST HAVE PULLED THE WRONG CARD OUT OF A PILE OF CARDS.

OUR ASSESSMENT OF MRS. ANGEL AS A WITNESS AND, IN ALL THE CIRCUMSTANCES, OF THE PROBABLE ACCURACY OF HER EXPLANATIONS AS TO HOW AND WHY GAUDET'S UNPAID CARD WAS SUBMITTED TO THE UNION, AND THEREAFTER TO THE BOARD, DOES NOT INSPIRE MUCH CONFIDENCE IN THE RELIABILITY OF HER EXPLANATIONS. WE ARE CONSTRAINED TO FEEL THAT HER EXPLANATIONS ARE MORE IN THE NATURE OF AN ATTEMPT AT SELF-JUSTIFICATION THAN A FRANK AND CREDIBLE ACCOUNT OF WHAT IN FACT HAPPENED. WE ARE IMPELLED TO CONCLUDE THAT THE SERIOUSNESS OF HER ORIGINAL NON-DISCLOSURE IN RESPECT TO THE GAUDET CARD HAS BEEN COMPOUNDED BY THE REVELATION OF IRREGULARITIES IN CONNECTION WITH OTHER CARDS, AND THE ABSENCE OF ANY RELIABLE EXPLANATION FOR THE SAME ON HER PART IN THE WITNESS BOX. EVEN IF WE WERE TO ACCEPT THE EXCUSE THAT GAUDET'S CARD WAS SUBMITTED IN ERROR, WE ARE UNABLE TO IGNORE THE FACT THAT THE INFORMATION ON THIS CARD AND ON OTHER CARDS, UNEQUIVOCALLY PURPORTS TO ACKNOWLEDGE, CONTRARY TO THE FACTS WELL KNOWN TO MRS. ANGEL AT THE TIME, THAT THE PAYMENTS WERE MADE ON THE DATES GIVEN IN THE RECEIPTS. IF NOTHING ELSE, THIS INDICATES A PATTERN OF SERIOUS LAVITY OF SOME MAGNITUDE IN THE MATTER OF SIGNING UP AND COLLECTING MONEY FROM APPLICANTS FOR MEMBERSHIP. IN OUR OPINION, MRS. ANGEL MUST BE TAKEN TO HAVE BEEN SO LAX IN THESE MATTERS AS TO HAVE CLOSED HER EYES TO ALL THESE IRREGULARITIES IN THE EVIDENCE OF MEMBERSHIP. IF SHE WAS SO LAX AS TO HAVE CLOSED HER EYES IN RESPECT TO THE IRREGULARITIES CONCERNING THE OTHER CARDS IT IS EASY TO FIND, AS WE ARE IMPELLED TO DO, THAT HER LAXITY CAUSED HER TO CLOSE HER EYES TO GAUDET'S CARD AS WELL.

TWO WITNESSES TESTIFIED THAT WHEN MRS. ANGEL APPROACHED THEM TO SIGN APPLICATION FOR MEMBERSHIP CARDS, SHE TOLD THEM THAT IF THEY REFUSED TO SIGN AND THE UNION GOT IN, THEY WOULD BE WITHOUT A JOB. THESE WITNESSES ALSO STATED THAT THEY INFORMED OTHER EMPLOYEES OF WHAT MRS. ANGEL HAD TOLD THEM IN THIS RESPECT. IT IS A MATTER OF



SIGNIFICANT CONSIDERATION THAT MRS. ANGEL WAS NOT CALLED TO DENY OR TO EXPLAIN OR TO GIVE ANY EVIDENCE IN RESPECT TO THIS, NOR WAS THIS TESTIMONY IN ANY WAY EXPLAINED OR CONTRADICTED BY ANY OTHER WITNESSES.

COUNSEL FOR THE APPLICANT ARGUES THAT AS MRS. ANGEL WAS NOT A PAID OFFICIAL OR REPRESENTATIVE OF THE UNION THAT, IN ALL THE CIRCUMSTANCES, INCLUDING THE FACT, AS HE ARGUES, THAT THERE IS NO EVIDENCE THAT THE ALLEGED THREATS ACTUALLY INFLUENCED THE EMPLOYEES, THE BOARD SHOULD TREAT THIS CASE AS DISCLOSING NOTHING MORE THAN MINOR IRREGULARITIES. THESE, HE SUBMITS, SHOULD NOT DEFEAT THE APPLICATION. HE CONTENDS THAT AT MOST THE BOARD SHOULD RESOLVE ANY DOUBTS WHICH IT MAY HAVE ON THE EVIDENCE OF MEMBERSHIP BY DIRECTING A REPRESENTATION VOTE.

IN THE VALLEY TRANSPORTATION COMPANY LIMITED CASE (BOARD FILE NO. 6100-63-R) IT WAS STATED AS FOLLOWS:-

IT NEED HARDLY BE POINTED OUT, THAT IT WOULD BE IMPOSSIBLE FOR THE BOARD TO INTERVIEW EACH AND EVERY EMPLOYEE IN RESPECT OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER, WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE, EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE, MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION'S MEMBERSHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMINATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C. C. H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,110, AT P. 12,204,

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

WE THINK THAT THESE REMARKS ARE PECULIARLY APPLICABLE TO THE SITUATION IN THE PRESENT CASE.

ON THE EVIDENCE BEFORE US THE THREATS IN QUESTION WERE CLEARLY, IN OUR OPINION, CONTRARY TO THE PROVISIONS OF SECTION 52 OF THE LABOUR RELATIONS ACT AND, THEREFORE, THEY DID CONSTITUTE UNFAIR LABOUR PRACTICES. OUR EXPERIENCE IN SUCH MATTERS COMPELS US TO TAKE COGNIZANCE OF THE FACT THAT THE QUESTION AS TO WHETHER A PERSON WAS OR WAS NOT INFLUENCED TO SIGN A PETITION OR A UNION CARD BY THREATS OF ECONOMIC REPRISAL, IS OFTEN MORE RELIABLY ASCERTAINED FROM THE OBJECTIVE FACTS AS A WHOLE THAN FROM MERE SUBJECTIVE ASSERTIONS FROM WITNESSES GIVEN LATER. HOWEVER, EVEN IF WE WERE TO FIND, AS ARGUED BY COUNSEL FOR THE APPLICANT, THAT THE PARTICULAR TWO EMPLOYEES IN QUESTION, AS IT TURNED OUT, WERE PROBABLY NOT IN FACT INFLUENCED BY THE THREATS OF ECONOMIC REPRISALS MADE BY MRS. ANGEL, WE ARE NOT PERSUADED THAT WE SHOULD OR CAN DISREGARD THEM. IN THIS RESPECT WE HAVE NO ASSURANCE THAT EMPLOYEES OTHER THAN THE TWO IN QUESTION DID NOT SIGN CARDS UNDER AND AS A RESULT OF THE KNOWLEDGE OF SUCH THREATS BEING MADE TO THE TWO PERSONS IN QUESTION OR OF SIMILAR THREATS BEING MADE TO THEM BY MRS. ANGEL.

IN THE MILNET MINES CASE, (1953) C.C.H. CANADIAN LABOUR LAW REPORTS, ¶17, 063, IT IS STATED:

IF WE WERE TO ACCEPT AS VALID EVIDENCE OF MEMBERSHIP APPLICATIONS OBTAINED THROUGH INTIMIDATION, WE WOULD BE ISSUING AN OPEN INVITATION TO TRADE UNIONS TO ENGAGE IN PRACTICES FROWNED UPON BY THE LEGISLATION. THIS WOULD MAKE A FARCE OF THE DECLARATION OF POLICY CONTAINED IN SECTION 3 OF THE ACT THAT "EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE". (SEE ALSO THE CANADIAN FABRICATED PRODUCTS LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTS, 1949-54, ¶17, 090.)

IN CONSIDERING THE EFFECT OF SUCH IMPROPRIETIES IN THE SOLICITATION AND PRESENTATION OF EVIDENCE OF MEMBERSHIP AS EXIST IN THE PRESENT CASE, THE BOARD HAS, OF COURSE, (SEE THE R.C.A. VICTOR COMPANY LTD. CASE (PRESCOTT), C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-54, ¶17, 067, AND THE WEBSTER AIR EQUIPMENT CASE, C.C.H. IBID, TRANSFER BINDER 1955-59 ¶16, 110, C.L.S. 76-598) DISTINGUISHED BETWEEN IMPROPRIETIES RESULTING FROM THE ACTIONS OF A UNION OFFICIAL OR REPRESENTATIVE AND THOSE RESULTING FROM A RANK-AND-FILE EMPLOYEE. WHILE IN THE FORMER CASE SINGLE INSTANCES OF SUCH IMPROPRIETIES ARE USUALLY CONSIDERED OF SUCH SERIOUSNESS AS TO CAST A CLOUD ON ALL THE EVIDENCE TO THE EXTENT OF WARRANTING OUTRIGHT DISMISSAL, THE BOARD HAS USUALLY TAKEN A MORE LENIENT ATTITUDE IN CASES WHERE THE CANVASSER WAS A RANK-AND-FILE EMPLOYEE. IN THE LATTER CASE, THE WEIGHT TO BE GIVEN TO THE EVIDENCE DEPENDS ON ALL THE CIRCUMSTANCES. IN THIS RESPECT, THE BOARD WILL TAKE INTO ACCOUNT THE NATURE OF THE IMPROPRIETIES AND THE FREQUENCY TO WHICH THE OBJECTIONABLE PRACTICES HAVE PROBABLY BEEN RESORTED TO IN THE ORGANIZATION CAMPAIGN. (SEE ALSO THE LINHAVEN HOME FOR THE AGED, CASE, ONTARIO MONTHLY REPORT, MAY, 1962, P. 66; MILNET MINES LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-54, ¶17, 063, C.L.C. 76-407;

THE ROYAL YORK CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1961, P. 181; DUPONT OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1961, P. 860, AND FEBRUARY, 1962, P. 404; CANADIAN FABRICATED PRODUCTS LIMITED CASE, C.C.H. IBID, TRANSFER BINDER, ¶17,090, C.L.S. 76-470). THE EXTENT TO WHICH THE PARTICULAR CANVASSER IS INVOLVED IN THE CAMPAIGN AND THE ROLE ASSUMED THEREIN BY SUCH PERSON MUST, OF COURSE, BE A SIGNIFICANT AND IMPORTANT CIRCUMSTANCE TO CONSIDER IN DETERMINING THE PROBABLE FREQUENCY TO WHICH THE OBJECTIONABLE PRACTICES HAVE BEEN RESORTED TO IN THE CAMPAIGN.

HAVING REGARD TO THE PROMINENT ROLE PERFORMED BY MRS ANGEL IN THE ORGANIZATIONAL CAMPAIGN, WE FIND THAT THE IMPROPRIETIES REVEALED IN THIS CASE CAST SUCH SERIOUS DOUBT ON THE UNION'S EVIDENCE OF MEMBERSHIP THAT WE ARE UNABLE TO PLACE ANY RELIANCE ON IT."

8227-64-R:- UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. TILLSONBURG SHOE CO. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONDUCTED AN INQUIRY INTO THE ALLEGATIONS OF THE RESPONDENT THAT THE APPLICANT HAD FILED DOCUMENTARY EVIDENCE OF MEMBERSHIP FOR AN EMPLOYEE WHO HAD NOT PAID ONE DOLLAR INITIATION FEE ON HER OWN BEHALF AS CLAIMED BY THE APPLICANT.

THE MEMBERSHIP CARD IN QUESTION WAS SIGNED BY MRS. BARBARA MOLNAR AN EMPLOYEE OF THE RESPONDENT AND MRS. MOLNAR CERTIFIED, ON THE RECEIPT PORTION OF THE MEMBERSHIP CARD, THAT SHE HAD PAID ONE DOLLAR INITIATION FEE.

MR. DE. PREZ, WHO WAS ALSO AN EMPLOYEE OF THE RESPONDENT AT THE RELEVANT TIME, SIGNED THE MEMBERSHIP CARD AS COLLECTOR AND THEREBY INDICATED THAT HE HAD RECEIVED ONE DOLLAR INITIATION FEE FROM MRS. MOLNAR.

BOTH MRS. MOLNAR AND MR. DE PREZ ATTENDED THE FIRST UNION MEETING WHICH PRECEDED THE CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. BOTH ACKNOWLEDGED THAT THE APPLICANT'S OFFICERS WHO CONDUCTED THE MEETING ADVISED THE EMPLOYEES THAT IT WAS NECESSARY FOR EACH EMPLOYEE TO PAY ONE DOLLAR ON HIS OWN BEHALF IN ORDER TO BECOME A MEMBER OF THE APPLICANT. MR. DE PREZ FURTHER STATED THAT THE APPLICANT'S OFFICERS HAD ADVISED THOSE WHO VOLUNTEERED TO ASSIST IN THE ORGANIZING CAMPAIGN THAT IF THEY FOUND IT NECESSARY TO LEND A PROSPECTIVE MEMBER THE DOLLAR INITIATION FEE, TO MAKE SURE THAT THE DOLLAR WAS REPAID. THE OFFICIALS TOLD THOSE IN ATTENDANCE AT THE MEETING THAT IT WAS A REQUIREMENT OF THE LABOUR RELATIONS BOARD THAT EACH MEMBER PAY ONE DOLLAR ON THEIR OWN BEHALF.

MRS. MOLNAR TESTIFIED THAT SHE HAD RECEIVED A MEMBERSHIP CARD AT THE UNION MEETING AND THAT SUBSEQUENTLY MR. DE PREZ HAD LENT HER ONE DOLLAR IN ORDER THAT SHE COULD JOIN THE APPLICANT UNION. AT THE TIME DE PREZ LENT

HER THE DOLLAR SHE TOLD HIM SHE WOULD REPAY THE DOLLAR ON THE NEXT PAY DAY. MRS. MOLNAR NEVER DID REPAY THE DOLLAR.

MR. DE PREZ WAS AN UNPAID VOLUNTEER ORGANIZER OF THE APPLICANT UNION WHO CAUSED A TOTAL OF THREE EMPLOYEES TO SIGN MEMBERSHIP CARDS.

MR. DE PREZ READILY ADMITTED THAT HE LENT MRS. MOLNAR THE DOLLAR INITIATION FEE AND THAT THIS AMOUNT WAS NEVER REPAID BY MRS. MOLNAR. MR. DE PREZ STATED THAT WHILE MRS. MOLNAR AGREED TO REPAY THE LOAN AT THE TIME THE LOAN WAS MADE, HE NEVER ASKED HER FOR THE DOLLAR BECAUSE HE "DID NOT LIKE PESTERING PEOPLE". MR. DE PREZ FURTHER TESTIFIED THAT WHILE HE SIGNED A TOTAL OF THREE MEMBERS HE COLLECTED ONE DOLLAR FROM EACH OF THE OTHER TWO MEMBERS AND ONLY MADE A LOAN OF A DOLLAR TO MRS. MOLNAR. MR. DE PREZ DID NOT RECALL BRINGING THE MATTER OF THE LOAN TO MRS. MOLNAR TO THE ATTENTION OF THE UNION OFFICIALS BUT STATED THE HE BELIEVED THAT "HE KEPT THIS TO HIMSELF".

WHILE MRS. MOLNAR TESTIFIED THAT SHE AGREED TO REPAY THE DOLLAR SHE ALSO STATED THAT MR. DEPREZ HAD INFORMED HER THAT SHE "DID NOT HAVE TO BOTHER" IF SHE DID NOT WANT TO REPAY THE MONEY. MR. DE PREZ DENIED THAT HE TOLD MRS. MOLNAR THAT SHE DID NOT HAVE TO REPAY THE DOLLAR.

HAVING REGARD TO ALL THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES AS ASSESSED BY THEIR CONDUCT IN THE WITNESS BOX AND THE MANNER IN WHICH THEY GAVE THEIR EVIDENCE, THE BOARD FINDS MR. DE PREZ TO BE A TRUTHFUL WITNESS. WE FURTHER FIND THAT WHILE HE MAY HAVE BEEN PREPARED TO FORGET ABOUT THE DEBT OWING BY MRS. MOLNAR, RATHER THAN "PESTER HER FOR THE MONEY", HE DID IN FACT LEND HER THE INITIATION FEE IN GOOD FAITH, EXPECTING THE MONEY TO BE REPAID.

THE BOARD FURTHER FINDS THAT THIS INCIDENCE OF "NON-PAY" WAS AN ISOLATED ONE. WHILE MRS. MOLNAR'S MEMBERSHIP CARD CANNOT BE TAKEN INTO CONSIDERATION, THERE WAS NO EVIDENCE OF A PATTERN OF "NON-PAY" WHICH WOULD CAUSE THE BOARD TO QUESTION THE VALIDITY OF THE BALANCE OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

BECAUSE OF THE MANNER IN WHICH MEMBERSHIP EVIDENCE IS SUBMITTED AND VERIFIED BY AN APPLICANT TRADE UNION, THE BOARD IS COMPELLED TO RELY VERY EXTENSIVELY ON THE GOOD FAITH AND VERACITY OF THE STATEMENTS CONTAINED IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS - FORM 9. ACCORDINGLY, THE BOARD VIEWS ANY EVIDENCE OF NON-PAY AS AN EXTREMELY SERIOUS MATTER, NOT ONLY WITH RESPECT TO THE CARD IN QUESTION BUT ALSO WITH RESPECT TO ALL THE EVIDENCE OF MEMBERSHIP. HOWEVER, WHILE THE MANNER IN WHICH MRS. MOLNAR'S MEMBERSHIP CARD WAS SIGNED MAY BE CHARACTERIZED AS CARELESS, HAVING REGARD TO ALL THE EVIDENCE, WE ARE NOT PREPARED TO FIND THAT MR. DE PREZ DELIBERATELY SET OUT TO MISLEAD THE BOARD OR THAT HIS ACTIONS WERE ENCOURAGED OR CONDONED BY THE APPLICANT UNION. HIS CONDUCT WAS IN FACT CONTRARY TO THE EXPRESSED INSTRUCTIONS GIVEN BY THE UNION OFFICIALS.



WE FURTHER FIND THAT THE UNION OFFICIAL WHO COMPLETED FORM 9, MADE THE DECLARATION IN GOOD FAITH. THERE IS NO EVIDENCE THAT HE HAD KNOWLEDGE OR SHOULD HAVE HAD KNOWLEDGE OF THE LOAN TO MRS. MOLNAR. THERE IS ALSO NO EVIDENCE TO JUSTIFY A FINDING BY THE BOARD THAT THE UNION OFFICIAL FAILED TO MAKE THE INQUIRIES REQUIRED OF HIM BEFORE COMPLETING THE DECLARATION OR THAT HE FAILED TO MAKE FULL DISCLOSURE IN HIS DECLARATION.

IN THESE CIRCUMSTANCES, WHILE THE APPLICANT'S MEMBERSHIP POSITION IS REDUCED BY ONE CARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE."

8404-64-R: S.W. FLEMING EMPLOYEES' ASSOCIATION (APPLICANT) V. S.W. FLEMING AND COMPANY LIMITED (RESPONDENT) V. SHEET METAL WORKERS INTERNATIONAL ASSOC. LOCAL 233 (INTERVENER) (71 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE INTERVENER IN THIS APPLICATION, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 233, HAS BEEN THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPANY SINCE 1959. THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EXPIRED ON APRIL 30TH, 1964. ONE MEETING WAS HELD BETWEEN THE PARTIES ON MARCH 30TH FOR THE PURPOSE OF RENEGOTIATING THE AGREEMENT. AT THAT MEETING THE RESPONDENT SERVED ON THE INTERVENER ITS WRITTEN PROPOSALS. ALTHOUGH THERE WAS SOME DISCUSSION OF THE RESPONDENT'S OFFER NO AGREEMENT WAS REACHED ON THE PROPOSALS. A FURTHER MEETING WAS SCHEDULED BUT WAS SUBSEQUENTLY CANCELLED BY THE BUSINESS AGENT FOR THE INTERVENER. AT THE TIME OF THE HEARING NO FURTHER MEETINGS HAVE TAKEN PLACE BETWEEN THE PARTIES.

IT APPEARS FROM THE EVIDENCE THAT SOME EMPLOYEES OF THE RESPONDENT WERE NOT SATISFIED WITH THE MANNER IN WHICH THE INTERVENER WAS REPRESENTING THEIR INTERESTS. DISCUSSIONS RESULTED AMONG A GROUP OF EMPLOYEES WITH REGARD TO THE POSSIBILITY OF FORMING AN EMPLOYEES' ASSOCIATION TO DISPLACE THE INTERVENER AS THEIR BARGAINING AGENT. TOWARDS THIS END, GERALD BRYER, AN EMPLOYEE OF THE RESPONDENT ASKED VERNE ELLINGER THE PLANT FOREMAN TO ARRANGE A MEETING WITH SAMUEL FLEMING, THE PRESIDENT OF THE RESPONDENT COMPANY. A MEETING WAS HELD WITH FLEMING IN HIS OFFICE, AFTER WORKING HOURS, ON APRIL 14TH. THE MEETING WAS ATTENDED BY ELLINGER, WILLIAM KENNY, BRYER AND TWO OTHER EMPLOYEES. THE DELEGATION EXPRESSED TO FLEMING THEIR DISSATISFACTION WITH THE INTERVENER AND SPOKE OF THE POSSIBILITY OF AN EMPLOYEES' ASSOCIATION. IT IS NOT ENTIRELY CLEAR WHAT TRANSPIRED AT THIS MEETING. FLEMING DID, HOWEVER, STATE THAT HE WOULD BE PREPARED TO MAKE THE SAME OFFER TO A CERTIFIED EMPLOYEES' ASSOCIATION THAT HE HAD MADE TO THE INTERVENER.

IMMEDIATELY FOLLOWING THE MEETING WITH FLEMING, THE EMPLOYEES CONCERNED DECIDED TO CALL A MEETING OF ALL THE EMPLOYEES TO DISCUSS THE FORMATION OF AN EMPLOYEES' ASSOCIATION. THE PERMISSION OF ELLINGER WAS SECURED TO HAVE THE MEETING IN THE PLANT DURING THE LUNCH PERIOD ON THE FOLLOWING DAY, APRIL 15TH. THE MEETING WAS HELD AT THAT TIME IN THE PLANT OUTSIDE ELLINGER'S OFFICE.



ALTHOUGH BRYER AND PAUL PROVOST TESTIFIED THAT ELLINGER WAS ABSENT FROM HIS OFFICE DURING THE MEETING, THE EVIDENCE OF JOHN HOGG IS THAT ELLINGER WAS IN HIS OFFICE FOR AT LEAST PART OF THE MEETING.

BOTH BRYER AND KENNY ADDRESSED THE EMPLOYEES. THERE IS CONSIDERABLE CONFLICT IN THE EVIDENCE AS TO EXACTLY WHAT WAS SAID BY THE TWO MEN. BOTH BRYER AND KENNY INFORMED THE EMPLOYEES THAT THEY HAD MET WITH FLEMING THE PREVIOUS EVENING. ALTHOUGH THE EVIDENCE IS BY NO MEANS CLEAR, SOME REFERENCE WAS MADE BY KENNY TO THE POSSIBILITY OF AN EMPLOYEES' ASSOCIATION GETTING A BETTER WELFARE PLAN AND TO THE POSSIBILITY OF THE ESTABLISHMENT OF A PROFIT SHARING PLAN. HAVING REGARD TO ALL THE EVIDENCE, HOWEVER, WE FIND THAT KENNY CLEARLY CONVEYED TO THE EMPLOYEES THE IMPRESSION THAT A NEW ASSOCIATION COULD EXPECT TO RECEIVE MORE FAVOURABLE TREATMENT THAN THE INTERVENER FROM FLEMING. FLEMING PERMITTED THE MEETING TO EXTEND BEYOND THE REGULAR LUNCH PERIOD IN ORDER FOR THE EMPLOYEES TO CONCLUDE THEIR DISCUSSIONS. IMMEDIATELY FOLLOWING THE MEETING, ELLINGER GAVE PERMISSION FOR A VOTE TO BE TAKEN DURING WORKING HOURS, THE PURPOSE OF WHICH WAS TO ALLOW THE EMPLOYEES AN OPPORTUNITY TO INDICATE WHETHER THEY FAVOURED REMAINING WITH THE INTERVENER OR ESTABLISHING A NEW ASSOCIATION. PROVOST AND KENNY THEREUPON PROCEEDED TO GO AROUND THE PLANT WITH A BALLOT BOX AND CONDUCT THE VOTE BY SECRET BALLOT. BOTH THE BALLOT BOX AND THE PAPER USED FOR THE BALLOT WERE THE PROPERTY OF THE RESPONDENT. THE MAJORITY OF THE BALLOTS CAST FAVOURED THE FORMATION OF AN EMPLOYEES' ASSOCIATION.

IT APPEARS FROM THE EVIDENCE THAT SOME EMPLOYEES WERE NOT HAPPY WITH THE PROSPECT OF THE NEW EMPLOYEES' ASSOCIATION ADVOCATED BY BRYER AND KENNY. M. GIGANTE ACCORDINGLY ASKED ELLINGER TO ARRANGE A MEETING WITH FLEMING WHICH TOOK PLACE IN THE RESPONDENT'S BOARD ROOM, AFTER WORKING HOURS, ON APRIL 16TH. IN ADDITION TO FLEMING AND GIGANTE, THE MEETING WAS ATTENDED BY E. KING, M. BOCCARDI, G. BRASSARD AND JOHN HOGG, ALL EMPLOYEES OF THE RESPONDENT. THERE IS A CONFLICT IN THE EVIDENCE AS TO WHAT WAS SAID AT THIS MEETING. IT IS CLEAR, HOWEVER, THAT GIGANTE ATTEMPTED TO SECURE FROM FLEMING, WITHOUT SUCCESS, CONCESSIONS WITH RESPECT TO THE NEGOTIATIONS WITH THE INTERVENER. ALSO, IT IS CLEAR THAT FLEMING INFORMED THOSE PRESENT THAT HIS OFFER TO THE INTERVENER WAS WITHDRAWN BUT THAT HE WAS PREPARED TO MAKE BASICALLY THE SAME OFFER TO ANY NEW ASSOCIATION THAT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES.

A MEETING WAS HELD ON APRIL 21ST AFTER WORKING HOURS AT THE WHITE SHIELD PLAZA. ALTHOUGH BRYER TESTIFIED THAT THE EMPLOYEES WERE INFORMED OF THE MEETING BY WORD OF MOUTH, THE EVIDENCE OF HOGG IS THAT A NOTICE OF THE MEETING APPEARED ON THE PLANT NOTICE BOARD ABOVE THE TIME CLOCK. AT THAT MEETING THE EMPLOYEES ADOPTED A CONSTITUTION, ELECTED OFFICERS AND SIGNED UP MEMBERS IN THE NEW ASSOCIATION.

THERE IS NO QUESTION THAT THE EMPLOYEES WHO WERE INTERESTED IN FORMING THE APPLICANT ASSOCIATION SOUGHT THE SUPPORT OF FLEMING. WHILE THE EVIDENCE IS NOT CLEAR AS TO WHAT EXACTLY FLEMING TOLD THE EMPLOYEES ON APRIL 14TH, WE NOTE THAT IMMEDIATELY FOLLOWING THAT MEETING BRYER AND KENNY DECIDED TO CALL A MEETING OF ALL THE EMPLOYEES AT WHICH THEY PROMOTED THE APPLICANT ASSOCIATION. OF GREATER IMPORT, HOWEVER, IS FLEMING'S STATEMENT TO THE GROUP OF EMPLOYEES ON APRIL 16TH TO THE EFFECT THAT HIS ORIGINAL OFFER TO THE INTERVENER WAS WITHDRAWN, BUT THAT HE WOULD BE WILLING TO MAKE THE SAME OFFER TO A NEW BARGAINING AGENT. WE CAN ONLY INTERPRET THESE REMARKS AS SUPPORT FOR THE APPLICANT.

KENNY'S STATEMENT TO THE EMPLOYEES ON APRIL 15TH LEAD US TO CONCLUDE THAT HE INTERPRETED THE CONVERSATION WITH FLEMING ON APRIL 14TH AS ENCOURAGEMENT FOR THE ORGANIZING OF AN EMPLOYEES' ASSOCIATION. IF THAT IS NOT THE CASE, HE CERTAINLY CONVEYED THAT IMPRESSION TO THE EMPLOYEES. ALSO, THE VERY FACT THAT THE MEETING ON APRIL 15TH TOOK PLACE ON THE PREMISES OF THE RESPONDENT AND THE FACT THAT THE VOTE WAS TAKEN DURING WORKING HOURS WITH THE OBVIOUS CONSENT OF MANAGEMENT, IN OUR OPINION, WAS BOUND TO CREATE THE IMPRESSION IN THE MINDS OF THE EMPLOYEES THAT THE RESPONDENT SUPPORTED THE FORMATION OF THE APPLICANT ASSOCIATION.

HAVING REGARD TO ALL THE CIRCUMSTANCES IN THIS CASE, THE BOARD FINDS THAT THE RESPONDENT'S CONDUCT CONSTITUTES A VIOLATION OF SECTION 10 OF THE LABOUR RELATIONS ACT."

8642-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE COUNTY OF GREY (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

THE BOARD FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND THAT IT HAS DECLARED PURSUANT TO THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, THAT THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM. IT WAS SUBMITTED, ON BEHALF OF THE APPLICANT, THAT THE DECLARATION PURSUANT TO SECTION 89 OF THE LABOUR RELATIONS ACT CONTAINED IN BY-LAW No. 2110 OF THE CORPORATION OF THE COUNTY OF GREY HAD NOT RECEIVED THE APPROVAL OF THE MINISTER OF REFORM INSTITUTIONS AS REQUIRED BY SECTION 5 OF THE PENAL AND REFORM INSTITUTIONS INSPECTION ACT, R.S.O. 1960, c. 291, AND THAT, THEREFORE, THE BY-LAW DID NOT HAVE THE EFFECT OF A DECLARATION UNDER SECTION 89 OF THE LABOUR RELATIONS ACT. HOWEVER, THE PENAL AND REFORM INSTITUTIONS INSPECTION ACT HAS RECENTLY BEEN AMENDED BY THE ENACTMENT OF BILL 117, BY WHICH SUBSECTION 2 IS ADDED TO SECTION 5 OF THE ACT PROVIDING THAT

"SUBSECTION 1 DOESNOT APPLY TO BY-LAWS RESPECTING THE APPOINTMENT OR CONDITIONS OF EMPLOYMENT OF A JAIL SURGEON OR JAIL EMPLOYEE OR, SUBJECT TO SUBSECTION 2 OF SECTION 358 OF THE MUNICIPAL ACT, OF A JAILER."

THUS THE APPROVAL OF THE MINISTER OF REFORM INSTITUTIONS IS NOT NECESSARY IN THE CASE OF A BY-LAW PURSUANT TO SECTION 89 OF THE LABOUR RELATIONS ACT. THE DECISION OF THE BOARD IN THE CASE OF THE CORPORATION OF THE COUNTY OF NORFOLK (BOARD FILE NO. 4829-62- CANNOT BE FOLLOWED IN VIEW OF THIS CHANGE IN THE LEGISLATION. IN VIEW OF THE ACTION OF THE RESPONDENT IN MAKING A DECLARATION PURSUANT TO SECTION 89 OF THE LABOUR RELATIONS ACT, THE BOARD HAS NO JURISDICTION TO PROCESS THIS APPLICATION FURTHER AND THE APPLICATION IS ACCORDINGLY TERMINATED."

INDEXED ENDORSEMENTS - TERMINATION

7908-63-R: THE EMPLOYEES OF CITY PARK APARTMENTS LIMITED REPRESENTED BY S. BELL (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 20 (RESPONDENT).

(RE: CITY PARK APARTMENTS LIMITED  
TORONTO, ONTARIO).

ON MAY 6, 1964 THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE HELD. ON THAT DATE THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

S. BELL HAS BEEN AN EMPLOYEES OF CITY PARK APARTMENTS LIMITED SINCE THE 1ST DAY OF JANUARY 1961. HE OCCUPIES THE POSITION OF AN ELEVATOR MECHANIC AND IS THE ONLY PERSON IN THIS CLASSIFICATION EMPLOYED BY CITY PARK APARTMENTS LIMITED. AT THE TIME HE WAS HIRED HE NEGOTIATED BENEFITS AND WAGES FOR HIMSELF IN EXCESS OF THOSE PROVIDED FOR IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CITY PARK APARTMENTS LIMITED.

THE RESPONDENT FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CITY PARK APARTMENTS LIMITED MADE THE 1ST DAY OF APRIL 1962 WHICH REMAINED IN FULL FORCE AND EFFECT UNTIL THE 31ST DAY OF MARCH 1963. THIS COLLECTIVE AGREEMENT AUTOMATICALLY RENEWED ITSELF ON THE 1ST DAY OF APRIL, 1963 FOR A FURTHER PERIOD OF ONE YEAR. THERE IS NO EVIDENCE BEFORE THE BOARD OF THE TERMS AND CONDITIONS OF ANY PREVIOUS COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CITY PARK APARTMENTS LIMITED.

ARTICLE 2 OF THE COLLECTIVE AGREEMENT READS AS FOLLOWS:

"THIS AGREEMENT APPLIES TO ALL EMPLOYEES OF CITY PARK APARTMENTS LIMITED AT ITS APARTMENT BUILDINGS ON THE BLOCK AT THE SOUTH-WEST CORNER OF ALEXANDER AND CHURCH STREETS, TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

ARTICLE 4 OF THE COLLECTIVE AGREEMENT READS AS FOLLOWS:-

"ALL EMPLOYEES WHO ARE NOW MEMBERS OF THE UNION OR WHO LATER BECOME MEMBERS SHALL BE REQUIRED TO HAVE THEIR UNION DUES DEDUCTED FROM THE FIRST PAY OF EACH MONTH AS A CONDITION OF

EMPLOYMENT, DURING THE LIFETIME OF THIS AGREEMENT.

ALL NEW EMPLOYEES HIRED BY THE EMPLOYER AFTER THE DATE OF THIS AGREEMENT SHALL BE REQUIRED AS A CONDITION OF EMPLOYMENT TO HAVE AN AMOUNT EQUIVALENT TO THE REGULAR MONTHLY DUES DEDUCTED FROM THE FIRST PAY DUE TO THEM IN EACH CALENDAR MONTH.

THE COMPANY SHALL REMIT THE DEDUCTIONS MADE FROM THE PAY OF EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE TO THE FINANCIAL SECRETARY OF THE UNION PRIOR TO THE END OF THE MONTH IN WHICH THE DEDUCTIONS ARE MADE."

ALTHOUGH THE RESPONDENT REQUESTED THAT S. BELL BECOME A MEMBER OF THE RESPONDENT UNION, BELL TESTIFIED THAT HE REFUSED TO DO SO AND NEVER PAID DUES TO THE UNION. BECAUSE HIS EMPLOYMENT PRE-DATED THE COLLECTIVE AGREEMENT QUOTED IN PART ABOVE, THE FACT THAT NO UNION DUES WERE DEDUCTED FROM S. BELL IS NOT INCONSISTENT WITH THE TERMS OF THAT COLLECTIVE AGREEMENT.

THE RESPONDENT FILED A LETTER ADDRESSED TO THE RESPONDENT DATED OCTOBER 12TH, 1962 FROM THE COMPANY WHICH PROVIDED MANAGEMENT SERVICES FOR CITY PARK APARTMENTS LIMITED. THIS LETTER READS AS FOLLOWS:-

"THE FOLLOWING PEOPLE ARE WORKING AT THE CITY PARK APARTMENTS AS OF OCTOBER 12, 1962:"  
(THERE IS THEN LISTED 16 NAMES BUT S. BELL DOES NOT APPEAR ON THE LIST)

THIS LETTER WAS IDENTIFIED BY THE RESPONDENT'S WITNESS AS "A LIST OF PEOPLE WORKING AT THE CITY PARK APARTMENTS LIMITED AS OF OCTOBER 12TH, 1962." THERE IS NO EVIDENCE BEFORE THE BOARD WHICH WOULD INDICATE THAT THIS LETTER CONTAINED THE NAMES OF ALL THE EMPLOYEES OF CITY PARK APARTMENTS LIMITED AS OF THAT DATE OR THAT THE LIST CONTAINS THE NAMES OF ONLY THOSE EMPLOYEES FROM WHOM UNION DUES WERE BEING DEDUCTED PURSUANT TO THE TERMS OF THE COLLECTIVE AGREEMENT. IN OUR OPINION THE LATTER INTERPRETATION IS PREFERRED.

MR. BAIN, A WITNESS CALLED BY THE RESPONDENT, TESTIFIED BEFORE THE EXAMINER THAT "THE PREVIOUS BUSINESS AGENT FOR THE UNION HAD TOLD HIM THAT BELL REFUSED TO JOIN THE UNION, AND HE (BAIN) HAD DISCUSSED BELL'S STATUS WITH MR. BURRI DURING THE NEGOTIATION FOR THE AGREEMENT. MR. BURRI HAD TOLD HIM THAT HE WANTED BELL OUT OF THE UNIT BECAUSE HE HAS SPECIAL FUNCTIONS AND THAT HE (BELL) HAS SPECIAL WAGE AND JOB QUALIFICATIONS. HE (BAIN) SUBSEQUENTLY AGREED WITH BURRI TO EXCLUDE BELL FROM THE UNIT". HE LATER TESTIFIED THAT "HE HAD ALWAYS ASSUMED BELL TO BE OUTSIDE THE AGREEMENT AND HAD NEVER ATTEMPTED TO TALK TO BELL" AND AGAIN HE TESTIFIED THAT "BELL SHOULD BE OUT OF THE UNIT BECAUSE HE EXERCISED MANAGERIAL FUNCTIONS". THE WITNESS ALSO STATED THAT "HE HAD DEALINGS WITH OTHER EMPLOYEES IN THE BARGAINING UNIT,



'BUT THAT HE HAD NEVER DISCUSSED WITH THEM WHETHER OR NOT BELL WAS OUTSIDE THE UNIT OR A PART OF MANAGEMENT''.

MR. BAIN'S STATEMENTS ARE NOT ONLY INCONSISTENT WITH THEMSELVES, THEY ARE INCONSISTENT WITH THE RESPONDENT'S ATTEMPT TO CAUSE BELL TO JOIN THE RESPONDENT UNION, THEY ARE INCONSISTENT WITH WHAT HIS DUTIES AS AN ELEVATOR MECHANIC WERE KNOWN TO BE AND THEY ARE ALSO INCONSISTENT WITH THE TERMS OF THE COLLECTIVE AGREEMENT.

ALTHOUGH THE CLASSIFICATION OF ELEVATOR MECHANIC DOES NOT APPEAR IN THE WAGE SCALE OF THE COLLECTIVE AGREEMENT, THE COLLECTIVE AGREEMENT DOES NOT SPECIFICALLY EXCLUDE S. BELL BY NAME OR CLASSIFICATION. IN ADDITION THERE IS NOTHING IN THE COLLECTIVE AGREEMENT WHICH WOULD PERMIT THE BOARD TO INFER THAT MR. BELL'S POSITION HAD BEEN NEGOTIATED OUT OF THE COLLECTIVE AGREEMENT OR THAT HIS POSITION WAS NOT INCLUDED WITHIN THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT WHICH COVERS ALL EMPLOYEES.

HAVING REGARD TO ALL THE EVIDENCE THE BOARD FINDS THAT S. BELL IS AN ELEVATOR MECHANIC AND DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT.

ON THE BASIS OF ALL THE EVIDENCE, WE FIND THAT S. BELL IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT.

IN THE CIRCUMSTANCES OF THIS CASE HAVING REGARD TO THE FACT THAT THIS APPLICATION WAS MADE BY "THE EMPLOYEES OF CITY PARK APARTMENTS LTD. REPRESENTED BY S. BELL", EVEN IF WE HAD FOUND THAT S. BELL WAS NOT INCLUDED IN THE BARGAINING UNIT BECAUSE OF SOME SPECIAL ARRANGEMENT BETWEEN THE PARTIES TO THE COLLECTIVE AGREEMENT, THE FACT THAT HE REPRESENTED THE EMPLOYEES WHO ARE THE APPLICANTS IN THIS MATTER, WOULD NOT BE FATAL TO THIS APPLICATION SINCE WE HAVE FOUND THAT S. BELL DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT. IN THE ABSENCE OF ANY EVIDENCE OF MANAGEMENT SUPPORT OR INTERFERENCE, THERE IS NOTHING TO PREVENT S. BELL FROM REPRESENTING THE EMPLOYEES AS HE DID IN THIS CASE. OF COURSE, SUCH A FINDING HAD BEEN MADE, S. BELL WOULD NOT BE PERMITTED TO VOTE.

ON MAY 6, 1964 BOARD MEMBER D. M. STOREY DISSENTED AND SAID:-

"WHILE CONCURRING IN THE RESULT, I WOULD HAVE FOUND THAT S. BELL WAS EXCLUDED FROM THE BARGAINING UNIT BY AGREEMENT OF THE PARTIES TO THE COLLECTIVE AGREEMENT."

8440-64-R: STARK TRUCK SERVICE (LONDON) LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSE AND MISCELLANEOUS DRIVERS, (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

(RE: STARK TRUCK SERVICE (LONDON) LIMITED,  
LONDON, ONTARIO).



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY THE EMPLOYER COMPANY FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION UNDER SUBSECTION (2) OF SECTION 45 OF THE LABOUR RELATIONS ACT.

THE UNION WAS CERTIFIED BY THE BOARD ON DECEMBER 3RD, 1963 FOR A UNIT OF EMPLOYEES OF THE COMPANY. THE RESPONDENT GAVE NOTICE OF ITS DESIRE TO BARGAIN WITH THE COMPANY BY LETTER DATED DECEMBER 10TH, 1963. THE PARTIES MET ON JANUARY 6TH, 1964 BUT BECAUSE THE UNION WAS NOT REPRESENTED BY A BARGAINING COMMITTEE THE COMPANY REFUSED TO COMMENCE TO BARGAIN ON THAT DATE. BY LETTER DATED FEBRUARY 10TH THE UNION INFORMED F.W. MURRAY WHO REPRESENTS THE COMPANY THAT DONALD LUNDY AN EMPLOYEE OF THE APPLICANT HAD AGREED TO ACT AS A BARGAINING COMMITTEE. A MEETING BETWEEN THE PARTIES WAS SUBSEQUENTLY ARRANGED FOR FEBRUARY 20TH. IN THE INTERVENING PERIOD, HOWEVER, LUNDY NOTIFIED THE UNION THAT FOR DOMESTIC REASONS HE WOULD BE UNABLE TO ACT ON THE BARGAINING COMMITTEE. THIS INFORMATION WAS CONVEYED TO MURRAY ON FEBRUARY 18TH WHICH RESULTED IN THE CANCELLATION OF THE MEETING SCHEDULED FOR FEBRUARY 20TH. THERE WAS NO FURTHER COMMUNICATION BETWEEN THE PARTIES UNTIL APRIL 29TH WHEN R.J. BRIGGS REPRESENTING THE UNION, HAVING BEEN INFORMED BY LUNDY HE WAS AGAIN ABLE TO ACT ON THE BARGAINING COMMITTEE, REQUESTED MURRAY TO ARRANGE A MEETING WITH THE COMPANY. MURRAY TOLD BRIGGS THAT HE WAS AVAILABLE ON THE 5TH OR 6TH DAYS OF MAY, BUT WOULD HAVE TO CONSULT WITH HIS CLIENT PRIOR TO ARRANGING A MEETING. MURRAY DID NOT COMMUNICATE FURTHER WITH BRIGGS TO THE DATE OF FILING THIS APPLICATION ON MAY 5TH.

THE PRE-REQUISITE CONDITIONS FOR THE BOARD TO MAKE A DECLARATION UNDER SUBSECTION (2) OF SECTION 45 OF THE LABOUR RELATIONS ACT HAVE BEEN FULFILLED IN THAT THE UNION FAILED TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE ON DECEMBER 10TH, 1963. IN FACT, NO BARGAINING HAD TAKEN PLACE BY THE DATE OF THE FILING OF THIS APPLICATION. THE MAKING OF A DECLARATION UNDER SUBSECTION (2) OF SECTION 45 OF THE ACT, HOWEVER, LIES IN THE DISCRETION OF THE BOARD. BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF THE APPLICANT COMPANY, HOWEVER, IT MUST BE SATISFIED THAT THE UNION WHICH HAS THE BARGAINING RIGHTS HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTEREST OF THE EMPLOYEES WHOM IT REPRESENTS. (SEE OLIVER LUMBER COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1963, P. 280; WALMER TRANSPORT COMPANY CASE, (1953) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '49-'54, ¶17,062, C.L.C. 76-404). IN DETERMINING WHETHER THE UNION HAS ADEQUATELY PURSUED THE INTERESTS OF THE EMPLOYEES, THE BOARD DOES NOT CONFINE ITSELF TO A CONSIDERATION OF THE EVENTS THAT OCCURRED WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE. IT ALSO TAKES INTO ACCOUNT THE CIRCUMSTANCES COVERING THE ENTIRE PERIOD FROM THE GIVING OF NOTICE TO THE FILING OF THE APPLICATION, (SEE OLIVER LUMBER COMPANY CASE, SUPRA).

IN THE APPLICATION BEFORE US, THE UNION AFTER GIVING NOTICE DID SEEK TO BARGAIN WITH THE COMPANY AND MEETINGS WERE ARRANGED FOR JANUARY 6TH AND FEBRUARY 20TH. BARGAINING DID NOT COMMENCE ON EITHER OF THE TWO DATES, HOWEVER, BECAUSE THE UNION DID NOT HAVE A BARGAINING COMMITTEE. THE EXPLANATION OF THE UNION FOR THE SUBSEQUENT PERIOD OF

OVER TWO MONTHS WHEN NO FURTHER EFFORTS WERE MADE TO MEET WITH THE COMPANY IS THAT ITS BARGAINING COMMITTEE WAS STILL NOT AVAILABLE. WHEN, HOWEVER, THE UNION AGAIN HAD A BARGAINING COMMITTEE, IT PROMPTLY REQUESTED A MEETING WITH THE COMPANY.

HAVING REGARD TO ALL THE EVIDENCE, WE ARE NOT SATISFIED THAT THE UNION HAS BEEN SO REMISS IN PURSUING THE INTERESTS OF THE EMPLOYEES CONCERNED THAT THE BOARD SHOULD EXERCISE ITS DISCRETION AND MAKE THE DECLARATION SOUGHT BY THE COMPANY. IN ARRIVING AT OUR DECISION, AN IMPORTANT CONSIDERATION WAS THE FACT THAT THE COMPANY ONLY MADE ITS APPLICATION AFTER THE UNION INFORMED THE COMPANY THAT IT HAD A COMMITTEE AND WISHED TO MEET AND BARGAIN. FURTHER, THERE IS NO EVIDENCE THAT THE COMPANY WAS PREJUDICED IN ANY WAY BY REASON OF DELAY IN COMMENCING TO BARGAIN. WE WOULD MENTION ALSO THAT THE PURPOSE OF SECTION 45 IS TO PROTECT THE EMPLOYEES, AND, IN THE PROPER CASE, THE EMPLOYER. IT IS NOT, HOWEVER, TO BE USED TO PENALIZE A UNION FOR DELAY IN COMMENCING TO BARGAIN. (SEE DOMINION STORES CASE, (1956) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-'59, ¶16, ¶16,047, C.L.S. 76-529).

IN ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THIS IS NOT A CASE IN WHICH IT SHOULD EXERCISE ITS DISCRETION AND ISSUE A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION.

8535-64-R: VAIL & SHEPPARD, CARTAGE (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED). (35 EMPLOYEES).

(RE: VAIL & SHEPPARD, CARTAGE,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY THE EMPLOYER COMPANY FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION UNDER SUBSECTION (2) OF SECTION 45 OF THE LABOUR ELATIONS ACT.

THE UNION WAS CERTIFIED BY THE BOARD ON FEBRUARY 27TH, 1964 FOR A UNIT OF EMPLOYEES OF THE COMPANY. THE UNION GAVE NOTICE OF ITS DESIRE TO BARGAIN BY LETTER DATED MARCH 3RD, 1964. THE LETTER OF MARCH 3RD, HOWEVER, IN ERROR MADE REFERENCE TO A COMPANY OTHER THAN THE APPLICANT. ACCORDINGLY, THE UNION BY LETTER DATED MARCH 17TH REAFFIRMED ITS DESIRE TO BARGAIN WITH THE APPLICANT. A MEETING BETWEEN THE PARTIES WAS ARRANGED FOR MARCH 25TH, HOWEVER, DUE TO CERTAIN UNEXPECTED EXIGENCIES NO BARGAINING COMMENCED ON THAT DATE. FURTHER MEETINGS WERE SCHEDULED FOR APRIL 8TH AND APRIL 21ST, BUT DUE TO DIFFICULTIES ENCOUNTERED BY THE UNION IN FORMING A BARGAINING COMMITTEE THESE

MEETINGS WERE CANCELLED. AT THE TIME OF CANCELLING THE APRIL 21ST MEETING, JOHN F. KENNEDY, THE VICE-PRESIDENT OF THE RESPONDENT, INFORMED, INFORMED W.F. MURRAY WHO REPRESENTS THE COMPANY THAT HE WAS CALLING A MEETING OF THE EMPLOYEES FOLLOWING WHICH HE ASSUMED THAT HE WOULD BE IN A POSITION TO COMMENCE NEGOTIATIONS. BY LETTER DATED MAY 20TH, KENNEDY REQUESTED THAT MURRAY ADVISE THE UNION AS SOON AS POSSIBLE WHEN IT WOULD BE POSSIBLE TO MEET WITH THE COMPANY AND INDICATED THAT THE UNION WOULD BE AVAILABLE TO MEET ON OR AFTER MAY 25TH. THIS APPLICATION WHICH IS DATED MAY 19TH WAS FILED WITH THE BOARD ON MAY 20TH. MURRAY TESTIFIED THAT THE DECISION TO MAKE THE APPLICATION AND THE MAILING OF THE APPLICATION OCCURRED PRIOR TO RECEIVING NOTICE FROM KENNEDY BY TELEPHONE ON MAY 19TH OF THE UNION'S DESIRE TO MEET WITH THE COMPANY.

SECTION 45(2) OF THE LABOUR RELATIONS ACT VESTS IN THE BOARD A DISCRETION WITH RESPECT TO THE GRANTING OF THE DECLARATION SOUGHT BY THE APPLICANT. ALTHOUGH IN THE INSTANT CASE NO BARGAINING COMMENCED WITHIN SIXTY DAYS OF THE GIVING OF NOTICE, OR INDEED UP TO THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD IS NOT SATISFIED THAT THE UNION HAS FAILED TO PURSUE THE INTERESTS OF THE EMPLOYEES CONCERNED WITH THE COMPANY. HAVING REGARD TO ALL THE CIRCUMSTANCES AND THE MANNER IN WHICH THE BOARD EXERCISES ITS DISCRETION IN THIS TYPE OF APPLICATION (SEE STARK TRUCK SERVICE (LONDON) LIMITED, BOARD FILE NO. 8440-64-R) THE BOARD IS OF THE OPINION THAT IT SHOULD NOT EXERCISE ITS DISCRETION AND ISSUE A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION."

8586-64-R: HENRY F. DARRELL (APPLICANT) V. LOCAL 540, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA WITH HEADQUARTERS IN JAWKINS COUNTY, TENNESSEE, U.S.A. (RESPONDENT) V. CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION) (INTERVENER). (DISMISSED) (80 EMPLOYEES).

(RE: CONTINENTAL CAN COMPANY OF CANADA LIMITED, (PAPER DIVISION), HAMILTON, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

THE APPLICANT FILED THIS APPLICATION WITH THE BOARD ON MAY 26TH, 1964 FOR A DECLARATION THAT THE RESPONDENT UNION NO LONGER REPRESENTED THE EMPLOYEES OF THE INTERVENER COMPANY IN THE APPROPRIATE BARGAINING UNIT. THE SAME APPLICANT HAD PREVIOUSLY FILED AN APPLICATION ON APRIL 3RD, 1964 WITH RESPECT TO THE SAME UNIT OF EMPLOYEES FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE BOARD IN ITS DECISION DATED MAY 4TH IN THAT APPLICATION FOUND THAT THE APPLICANT HAD FAILED TO SATISFY IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. BY LETTER DATED MAY 11TH THE APPLICANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MAY 4TH. BY AN ENDORSEMENT DATED MAY 14TH, THE BOARD DENIED THE REQUEST OF THE APPLICANT.

THE RESPONDENT UNION AND THE INTERVENER COMPANY ARE BOUND BY A COLLECTIVE AGREEMENT EFFECTIVE FROM JUNE 1ST, 1963 UNTIL MAY 31ST, 1964 AND FROM YEAR TO YEAR THEREAFTER, SUBJECT TO NOTICE. A TIMELY NOTICE OF THE UNION'S DESIRE TO BARGAIN FOR THE RENEWAL OF THE AGREEMENT WAS GIVEN TO THE COMPANY BY LETTER DATED APRIL 14TH, SIGNED BY RONALD TOZZI, THE BUSINESS AGENT FOR LOCAL 540. ON THE EVIDENCE BEFORE US, THE BOARD FINDS THAT TOZZI IN HIS CAPACITY AS BUSINESS AGENT HAD THE AUTHORITY TO GIVE SUCH A NOTICE ON BEHALF OF THE UNION. SINCE THE DATE OF THE GIVING OF NOTICE, ALTHOUGH THERE HAVE BEEN DISCUSSIONS BETWEEN COMPANY OFFICIALS AND TOZZI, NO COLLECTIVE BARGAINING HAS COMMENCED BETWEEN THE PARTIES. THE EXPLANATION GIVEN FOR THE FAILURE TO BARGAIN IS THAT THE PARTIES HAVE BEEN WAITING FOR A FINAL DETERMINATION OF THE REPRESENTATION ISSUE.

THE FACTS IN THE INSTANT CASE, IN ALL RELEVANT RESPECTS, ARE THE SAME AS THOSE IN THE CANADIAN SEALRIGHT Co. LTD. CASE (1959) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1955-59, ¶16,157; C.L.S. 76-665. IN THAT CASE THE BOARD REAFFIRMED THE PRINCIPLE ESTABLISHED IN THE TRINIDAD LEASEHOLDS (CANADA) LIMITED CASE (1949) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-54, ¶17,005; D.L.S. 7-2107 THAT WHERE THERE IS A CURRENT AND ACTIVE BARGAINING RELATIONSHIP, A SECOND APPLICATION BY THE SAME APPLICANT SHOULD NOT BE ENTERTAINED BY THE BOARD UNTIL A REASONABLE OPPORTUNITY HAS BEEN GIVEN TO THE PARTIES TO THE COLLECTIVE AGREEMENT TO BARGAIN FOR ITS RENEWAL. IN THE CANADIAN SEALRIGHT Co. LTD. CASE (SUPRA) THE BOARD DESCRIBED "CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP" AS THE ACTIVITY OF THE UNION IN BARGAINING AND NOT THE DEGREE OF SUPPORT WHICH THE UNION MAY ENJOY AMONG THE EMPLOYEES IN THE BARGAINING UNIT.

IN OUR OPINION, IN THE INSTANT CASE, THE RESPONDENT HAS NOT HAD A REASONABLE OPPORTUNITY SINCE THE FINAL DISPOSITION OF THE FIRST APPLICATION AND THE FILING OF THE SECOND APPLICATION TO BARGAIN WITH THE INTERVENER COMPANY.

#### INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

8553-64-U: ALBERT SALAMIN, CARRYING ON BUSINESS AS ALPS CONSTRUCTION (APPLICANT) V. FREDERICK COLEMAN ET AL (RESPONDENTS). (GRANTED JUNE 1964).

8703-64-U: DOYLE HINTON LIMITED (APPLICANT) V. GINO FRANCHINI ET AL (RESPONDENTS). (GRANTED JUNE 1964).

THESE ARE TWO APPLICATIONS FOR A DECLARATION THAT A STRIKE ENGAGED IN BY NAMED RESPONDENTS IS UNLAWFUL. THE BOARD IN EACH APPLICATION ENDORSED THE RECORD IN PART AS FOLLOWS:-

THE RESPONDENTS, ARE EMPLOYEES OF THE APPLICANT AND ARE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (OF WHICH THE APPLICANT WAS A MEMBER AT ALL RELEVANT TIMES) AND THE BRICKLAYERS' UNION NO. 2 AND THE STONEMASONS' UNION NO. 26, OF TORONTO, ONTARIO



(AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS' INTERNATIONAL UNION OF AMERICA), WHICH CAME INTO EFFECT ON MAY 1ST, 1963 AND REMAINS IN EFFECT UNTIL APRIL 30TH, 1965.

WE ACCEPT THE EVIDENCE THAT IT WAS THE USUAL PRACTICE OF THE APPLICANT AND OTHER CONTRACTORS TO HAVE 10" BLOCKS LAID BY ONE BRICKLAYER. BLOCKS 12" OR OVER REQUIRE TWO BRICKLAYERS. THIS EVIDENCE IS SUPPORTED BY CLAUSE 25 OF THE COLLECTIVE AGREEMENT WHICH READS AS FOLLOWS:-

"IT IS AGREED THAT WHEN STANDARD AGGREGATE CONCRETE BLOCKS ARE USED HAVING A WIDTH OF (12") TWELVE INCHES OR OVER, SAME WILL BE LAID BY USING TWO BRICKLAYERS. THIS SHALL NOT HOWEVER APPLY TO LIGHT WEIGHT AGGREGATE BLOCKS SUCH AS CINDER, HAYDITE, OR SLAG."

IN FEBRUARY, 1964 (DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE BRICKLAYERS' UNION No. 2, OF WHICH THE RESPONDENTS ARE MEMBERS), THE UNION AMENDED ITS WORK RULES AS CONTAINED IN ITS CONSTITUTION AND BY-LAWS BY PROVIDING THAT TWO BRICKLAYERS MUST WORK IN PAIRS TO LAY 10" BLOCKS AND IF THEY FAILED TO COMPLY WITH THIS NEW WORK RULE THEY SHALL BE FINED NOT LESS THAN \$10.00. THIS NEW WORK RULE IS CONTAINED IN ARTICLE XVI, SECTION 10 OF THE UNION'S BY-LAWS.

ON MONDAY, JUNE 8TH, 1964, THE 4 RESPONDENTS WERE SENT TO THE APPLICANT BY THE BRICKLAYERS' UNION No. 2 AND WERE HIRED AS BRICKLAYERS BY THE APPLICANT. SHORTLY AFTER THEY COMMENCED WORK ON THAT DAY AFTER HAVING LAID SEVERAL 10" BLOCKS WORKING IN PAIRS, THE APPLICANT DIRECTED THE RESPONDENTS TO LAY THE BLOCKS INDIVIDUALLY. THE RESPONDENTS REFUSED TO LAY 10" BLOCKS UNLESS THEY WERE PERMITTED TO WORK IN PAIRS.

THE REASON GIVEN BY THE RESPONDENTS FOR THEIR REFUSAL TO DO THE WORK AS DIRECTED WAS THAT THE NEW UNION RULES REQUIRED 10" BLOCKS TO BE LAID BY TWO BRICKLAYERS WORKING IN PAIRS, AND IF THEY FAILED TO COMPLY WITH THIS RULE, THEY WOULD BE SUBJECT TO A FINE BY THE UNION. THE RESPONDENTS' WITNESSES ADMITTED THAT THIS NEW RULE HAD BEEN DRAWN TO THE RESPONDENTS' ATTENTION BY THEIR SHOP STEWARD ON INSTRUCTIONS FROM THE UNION. THE RESPONDENTS HAVE PERSISTED IN THEIR REFUSAL TO LAY 10" BLOCKS SINCE JUNE 8TH, 1964 ALTHOUGH THE APPLICANT MADE IT ABUNDANTLY CLEAR TO THE RESPONDENTS THAT THE APPLICANT WAS ANXIOUS TO HAVE THE RESPONDENTS RETURN TO WORK AT ANY TIME THE RESPONDENTS WERE PREPARED TO LAY BLOCKS INDIVIDUALLY IN ACCORDANCE WITH PAST PRACTICE.

WE DO NOT ACCEPT THE TESTIMONY OF THE RESPONDENTS OR THE ARGUMENT OF COUNSEL THAT THE RESPONDENTS' REFUSAL TO LAY 10" BLOCKS WAS MOTIVATED BY THEIR CONCERN FOR THEIR HEALTH AND THE POSSIBILITY OF A BACK INJURY. THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE RESPONDENTS, EACH OF WHOM HAVE HAD MANY YEARS EXPERIENCE AS BRICKLAYERS, HAVE EVER SUSTAINED ANY INJURY AS A RESULT OF LAYING 10" BLOCKS WHILE WORKING ALONE. IT IS ABUNDANTLY CLEAR FROM ALL THE EVIDENCE THAT THE RESPONDENTS REFUSED TO LAY



THE 10" BLOCKS BECAUSE THEY WERE SO INSTRUCTED BY THEIR SHOP STEWARD PURSUANT TO THE PROVISIONS OF THE UNION BY-LAWS AND WERE SUBJECT TO THE POSSIBILITY OF A FINE BY THEIR UNION IF THEY REFUSED TO FOLLOW THE UNION'S INSTRUCTIONS.

THE BOARD RECENTLY STATED IN THE LEADER MASONRY & FORMING LIMITED CASE, BOARD FILE #8603-64-U, JUNE 15TH, 1964, THAT ONE PARTY TO A COLLECTIVE AGREEMENT CANNOT BE PERMITTED TO UNILATERALLY CHANGE THE TERMS, CONDITIONS OR WORK RULES FIXED BY A COLLECTIVE AGREEMENT SIMPLY BY AMENDING ITS OWN BY-LAWS.

THE BOARD IS THEREFORE IMPELLED TO FIND THAT THE REFUSAL TO FOLLOW THE DIRECTIONS OF THE APPLICANT BY THE RESPONDENTS FALLS WITHIN THE DEFINITION OF "STRIKE" AS DEFINED BY SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT IN THAT ALL THE EMPLOYEES IN QUESTION REFUSED TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING WITH THE DESIGN TO RESTRICT OR LIMIT THE OUTPUT OF THE APPLICANT.

WHILE THE RESPONDENTS WERE CONFRONTED WITH A DIFFICULT CHOICE, THE FACT REMAINS THAT THEY CHOSE TO ACT IN VIOLATION OF THE COLLECTIVE AGREEMENT WHICH WAS BINDING UPON THEM. ALTHOUGH THE ALTERNATE COURSE OF ACTION MADE THEM SUBJECT TO A FINE BY THE UNION, IT MUST BE REMEMBERED THAT THE UNION IS THE BARGAINING AGENT WHICH THEY CHOSE TO ACT ON THEIR BEHALF. THE FINAL AND PERHAPS THE MOST IMPORTANT FACTOR IS THAT SINCE JUNE 8TH, 1964 UNTIL THE HEARING OF THIS MATTER, JUNE 16TH, 1964, THE RESPONDENTS HAVE CONTINUED TO REFUSE TO WORK FOR THE APPLICANT IN CONTRAVENTION OF THE COLLECTIVE AGREEMENT.

IN ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE SATISFIED THAT THIS IS AN INSTANCE IN WHICH THE BOARD SHOULD EXERCISE ITS DISCRETION AND ISSUE THE DECLARATION SOUGHT BY THE APPLICANT.

PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENTS, GINO FRANCHINI, JOHN MALCOLM, COURTNEY MARION AND HARRY TEAGLE DID ON AND AFTER JUNE 8TH, 1964 ENGAGE IN A STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54 (1) OF THE LABOUR RELATIONS ACT AND THIS STRIKE IS THEREFORE UNLAWFUL.

IN BOTH APPLICATIONS BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"WHILE I AGREE WITH THE MAJORITY THAT THE RESPONDENTS ACTED IN VIOLATION OF THE COLLECTIVE AGREEMENT WHICH WAS BINDING UPON THEM, HAVING REGARD TO THE CONSEQUENCES THAT WOULD HAVE FOLLOWED HAD THEY LAID 10" BLOCKS, I WOULD NOT HAVE MADE THE DECLARATION SOUGHT BY THE APPLICANT."

8602-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. CHARLES MEEK ET AL (RESPONDENTS) (DISMISSED).

8604-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. ALOIS BACHMAYER ET AL (RESPONDENTS) (DISMISSED).

ON JUNE 8, 1964 THE BOARD FOUND THAT THERE WAS NO EVIDENCE THAT NAMED RESPONDENTS WERE AT THE TIME OF THE ALLEGED OFFENCE EMPLOYEES OF THE APPLICANT COMPANY. IT DISMISSED THE APPLICATIONS.

ON JUNE 15, 1964 THE BOARD FURTHER ENDORSED THE RECORD OF BOTH APPLICATIONS IN PART AS FOLLOWS:-

"THE APPLICANT PURSUANT TO SECTION 79 (1) OF THE LABOUR RELATIONS ACT REQUESTS THE BOARD TO RECONSIDER ITS DECISION OF JUNE 8TH, 1964 WHEREIN IT DISMISSED THE APPLICATION OF THE APPLICANT FOR A DECLARATION THAT A STRIKE ENGAGED IN BY NAMED EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

IN SUPPORT OF ITS REQUEST THE APPLICANT SUBMITS THAT IF THERE IS EVIDENCE ON THE RECORD TO FIND THAT THE RESPONDENTS WERE EMPLOYEES OF THE APPLICANT, THE BOARD SHOULD HAVE SO FOUND. ALTERNATIVELY, THE APPLICANT SUBMITS THAT THERE WAS ADEQUATE EVIDENCE FOR THE BOARD TO FIND THAT THE NAMED RESPONDENTS IN EACH CASE WERE IN FACT EMPLOYEES OF THE APPLICANT.

BEFORE THE BOARD CAN MAKE A DECLARATION THAT THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE IT IS INCUMBENT UPON THE APPLICANT TO SATISFY THE BOARD THAT THE RESPONDENTS AT THE TIME OF THE ALLEGED OFFENCE WERE EMPLOYEES OF THE APPLICANT. HAVING REVIEWED ALL THE EVIDENCE ADDUCED AT THE HEARING OF THE BOARD ON JUNE 3RD, WE ARE NOT ABLE TO FIND THAT THE NAMED RESPONDENTS WERE IDENTIFIED AS EMPLOYEES OF THE APPLICANT. IN THESE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER ITS DECISION OF JUNE 8TH, 1964.

THE APPLICANT'S REQUEST, ACCORDINGLY, IS DENIED."

8603-64-U: LEADER MASONRY & FORMING LIMITED (APPLICANT) V. THE BRICKLAYERS' UNION NO. 2 AND THE STONE MASONS UNION NO. 26 OF TORONTO ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' PLASTERERS' INTERNATIONAL UNION OF AMERICA) (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

AT THE REQUEST OF THE APPLICANT AND WITH THE CONSENT OF THE RESPONDENT, THIS APPLICATION IS WITHDRAWN WITH RESPECT TO THE STONE MASONS UNION #26 OF TORONTO, BY LEAVE OF THE BOARD.

THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT BRICKLAYERS' UNION NO. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS' INTERNATIONAL UNION OF AMERICA) CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF CERTAIN EMPLOYEES OF THE APPLICANT.

THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM THE 1ST DAY OF MAY, 1963 UNTIL THE 30TH DAY OF APRIL, 1965 AND THIS COLLECTIVE AGREEMENT WAS IN EFFECT AND BINDING UPON THE PARTIES. THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED WERE EMPLOYED AT THE CARLAW AVENUE, TORONTO JOB SITE, WERE MEMBERS OF THE BRICKLAYERS' UNION NO. 2 AND WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AT THE RELEVANT TIMES.

THE TESTIMONY OF ALL THE WITNESSES IN THIS CASE INDICATED THAT IT WAS THE USUAL PRACTICE OF THE APPLICANT AND OTHER CONTRACTORS TO HAVE 10" BLOCKS LAID BY ONE BRICKLAYER. BLOCKS 12" OR OVER REQUIRED TWO BRICKLAYERS. THIS TESTIMONY IS SUPPORTED BY CLAUSE 25 OF THE COLLECTIVE AGREEMENT WHICH READS AS FOLLOWS:-

"IT IS AGREED THAT WHEN STANDARD AGGREGATE CONCRETE BLOCKS ARE USED HAVING A WIDTH OF (12") TWELVE INCHES OR OVER, SAME WILL BE LAID BY USING TWO BRICKLAYERS. THIS SHALL NOT HOWEVER APPLY TO LIGHT WEIGHT AGGREGATE BLOCKS SUCH AS CINDER, HAYDITE, OR SLAG."

IN FEBRUARY 1964 (DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES) THE RESPONDENT AMENDED ITS WORK RULES AS CONTAINED IN ITS CONSTITUTION AND BY-LAWS BY PROVIDING THAT TWO BRICKLAYERS MUST WORK IN PAIRS TO LAY 10" BLOCKS AND IF THEY FAILED TO COMPLY WITH THIS NEW WORK RULE THEY SHALL BE FINED NOT LESS THAN \$10.00. THIS NEW WORK RULE IS CONTAINED IN ARTICLE XVI, SECTION 10, OF THE RESPONDENT BY-LAWS.

THE EMPLOYEES OF THE APPLICANT HAD LAID 10" BLOCKS AND THESE BLOCKS WERE LAID BY INDIVIDUAL BRICKLAYERS UP TO AND INCLUDING FRIDAY, MAY 22ND, 1964.

ON MONDAY, MAY 25TH, 1964, THE APPLICANT'S JOB SUPERINTENDENT DISCOVERED THE EMPLOYEES WORKING IN PAIRS WHEN LAYING THE 10" BLOCKS. THE APPLICANT CAUSED THE MEN TO CEASE WORKING IN PAIRS WHEN LAYING THE BLOCKS AND DIRECTED THE MEN TO ENGAGE IN OTHER WORK FOR THE REST OF THAT DAY WHILE THE MATTER WAS INVESTIGATED.

ON TUESDAY, MAY 26TH, THE APPLICANT DIRECTED THE EMPLOYEES TO LAY THE 10" BLOCKS AND ALL THE EMPLOYEES REFUSED TO LAY THE 10" BLOCKS UNLESS THEY WERE PERMITTED TO WORK IN PAIRS.

WHILE THE EMPLOYEES OF THE APPLICANT WERE AT ALL TIMES PREPARED TO LAY 10" BLOCKS IF PERMITTED TO WORK IN PAIRS, THEY REFUSED TO LAY BLOCKS ALONE IN ACCORDANCE WITH THE PREVIOUS PRACTICE OF THE APPLICANT. WHILE A FEW OF THE EMPLOYEES OF THE APPLICANT WERE ENGAGED TO PERFORM SOME WORK OTHER THAN 10" BLOCK WORK, AFTER TUESDAY, MAY 26TH, 1964, NONE OF THE EMPLOYEES IN QUESTION LAID ANY 10" BLOCKS AFTER THAT DATE.

THE BUSINESS AGENT OF THE RESPONDENT WHO WAS IN CHARGE OF THE JOB IN QUESTION TESTIFIED THAT HE BROUGHT TO THE ATTENTION OF THE SHOP STEWARD ON THE JOB SITE, THE NEW WORK RULE WHICH REQUIRED TWO BRICKLAYERS TO WORK IN PAIRS WHEN LAYING 10" BLOCKS AND INSTRUCTED THE SHOP STEWARD THAT THIS WORK RULE MUST BE ENFORCED. THE SHOP STEWARD FURTHER TESTIFIED THAT AS A PAID SERVANT OF THE RESPONDENT UNION HE WAS OBLIGED TO ENFORCE ALL THE WORK RULES IN ACCORDANCE WITH THE CONSTITUTION AND BY-LAWS OF THE BRICKLAYERS' UNION No. 2. COUNSEL FOR THE RESPONDENT ADMITTED THAT THESE INSTRUCTIONS WERE CONVEYED TO THE EMPLOYEES.

THE BOARD FINDS THAT IT IS ABUNDANTLY CLEAR THAT THE EMPLOYEES OF THE APPLICANT WERE FACED WITH A CHOICE OF EITHER WORKING IN PAIRS WHEN LAYING 10" BLOCKS IN ACCORDANCE WITH THE BY-LAWS OF THE BRICKLAYERS UNION No. 2, OR PAYING A FINE IF THEY CONTINUED TO LAY 10" BLOCKS ALONE. ACCORDINGLY THE EMPLOYEES REFUSED TO LAY 10" BLOCKS RATHER THAN RISK A FINE BY THE RESPONDENT.

THE BOARD IS THEREFORE IMPELLED TO FIND THAT SUCH A REFUSAL BY THE EMPLOYEES IN QUESTION FALLS WITHIN THE DEFINITION OF "STRIKE" AS DEFINED BY SECTION 1 (1) (1) OF THE LABOUR RELATIONS ACT IN THAT ALL THE EMPLOYEES IN QUESTION REFUSED TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING WITH THE DESIGN TO RESTRICT OR LIMIT THE OUTPUT OF THE APPLICANT.

THE STRIKE ENGAGED IN BY THE EMPLOYEES WAS ENGAGED IN DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT COVERING THEM AND IS THEREFORE UNLAWFUL.

THE RESPONDENT BRICKLAYERS' UNION No. 2, ATTEMPTED TO UNILATERALLY ALTER THE TERMS OR CONDITIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE BRICKLAYERS UNION No. 2 AND THE APPLICANT SIMPLY BY AMENDING ITS BY-LAWS. WHEN THE BY-LAWS WERE ENFORCED BY THE RESPONDENT THE INEVITABLE AND INTENDED RESULT WAS THE IMPOSITION OF NEW WORK RULES AND CONDITIONS CONTRARY TO THE APPLICANT'S USUAL PRACTICE AND CONTRARY TO THE INTENT AND PURPOSE OF THE COLLECTIVE AGREEMENT.

THE EVIDENCE IN THIS CASE IS OPEN TO ONLY ONE CONCLUSION AND THAT IS THAT THE BRICKLAYER'S UNION No. 2 CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANT AT CARLAW AVENUE, TORONTO JOB SITE ON OR ABOUT TUESDAY, MAY 26TH, 1964. TO FIND OTHERWISE WOULD PERMIT EITHER PARTY TO A COLLECTIVE AGREEMENT TO UNILATERALLY CHANGE THE TERMS, CONDITIONS OR WORK RULES FIXED BY A COLLECTIVE AGREEMENT SIMPLY BY AMENDING ITS OWN BY-LAWS. IN THE SAME MANNER THAT THE BOARD WOULD NOT PERMIT THE RIGHTS OF A TRADE UNION UNDER A COLLECTIVE AGREEMENT TO BE AFFECTED BY THE UNILATERAL ACTION OF THE SHARE HOLDERS OF A COMPANY WHICH CONTINUED TO BE A PARTY TO THE COLLECTIVE AGREEMENT, THE BOARD WILL NOT PERMIT THE UNILATERAL ACTIONS OF THE MEMBERS OF A TRADE UNION TO ADVERSELY AFFECT THE RIGHTS OF AN EMPLOYER UNDER A COLLECTIVE AGREEMENT. THE RESPONDENT IN THIS CASE HAS IGNORED THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND THE LABOUR RELATIONS ACT AND THERE IS NO REASON FOR THE BOARD TO EXERCISE ITS DISCRETION IN FAVOUR OF THE RESPONDENT.

PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT, THE BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS INTERNATIONAL OF AMERICA) DID ON AND AFTER MAY 26TH, 1964 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY THE EMPLOYEES OF THE APPLICANT AT THE CARLAW AVENUE, TORONTO JOB SITE, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENT - SECTION 65



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

" COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT ALLEGES THAT HE HAS BEEN BY-PASSED IN THE LINE OF PROMOTION FOR SPARE BOSS MACHINE TENDER BECAUSE HE HELD OFFICE IN LOCAL 101 OF THE UNITED PAPERMAKERS AND PAPERWORKERS UNION.

IT IS CLEAR FROM THE PROVISIONS OF ARTICLE XI OF THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE RESPONDENT COMPANY THAT PROMOTION IS SUBJECT TO THE GRIEVANCE PROCEDURE PROVIDED FOR IN THE COLLECTIVE AGREEMENT. IT IS EQUALLY CLEAR FROM THE STATEMENTS OBTAINED BY THE FIELD OFFICER IN THE COURSE OF HIS INQUIRY INTO THE COMPLAINT THAT THE COMPLAINANT HAS NOT FILED A GRIEVANCE UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THERE HAS BEEN NO DISCUSSION WITH THE LOCAL OR THE INTERNATIONAL UNION AND NONE WITH THE COMPANY.

IN THE UNITED GAS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1963, P. 439, THE BOARD SAID AT P. 441:

" . . . IT IS THE WELL-ESTABLISHED PRACTICE OF THIS BOARD, THAT WHERE THE CONDUCT COMPLAINED OF AS CONSTITUTING A BASIS FOR RELIEF UNDER SECTION 65 OF THE ACT IS PROPERLY THE SUBJECT MATTER OF A GRIEVANCE UNDER A SUBSISTING COLLECTIVE AGREEMENT, THAT AS A GENERAL RULE, THIS BOARD SHOULD DECLINE TO INQUIRE INTO THE GRIEVANCE UNDER SECTION 65 OF THE ACT. THE BOARD'S PRACTICE RECOGNIZES THAT IT IS MORE IN CHARACTER WITH THE FUNCTIONS OF THE COLLECTIVE BARGAINING PROCESS AS ENVISAGED BY THE LEGISLATION IF THE PARTIES TO A GRIEVANCE ARISING UNDER A COLLECTIVE AGREEMENT ARE LEFT TO UTILIZE THE PROCEDURES AND REMEDIES CONTEMPLATED BY THEIR AGREEMENT. IN THIS RESPECT THE PARTIES OUGHT NOT TO BE ALLOWED TO CIRCUMVENT THESE PROCEDURES AND REMEDIES BY THE SIMPLE EXPEDIENT OF SUBMITTING THE GRIEVANCE TO THE LABOUR RELATIONS BOARD IN THE GUISE OF A COMPLAINT UNDER SECTION 65. (SEE, THE NATIONAL SHOWCASE COMPANY CASE, (1960) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16, 185, C.L.S. 76-715; DOMINION STORES LTD. CASE, BOARD FILE NO. 2858-61-U; WALLACE BARNES COMPANY CASE, (1961) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16, 198, C.L.S. 76-742; CANADIAN JOHN-MANVILLE COMPANY LIMITED CASE, BOARD FILE NO. 4109-62-U, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, AUGUST, 1962, P. 173; HEIST INDUSTRIAL SERVICES CASE, BOARD FILE NO. 5048-62-U.)

WHILE IN THE DOMINION STORES LIMITED AND THE HEIST INDUSTRIAL SERVICES CASES THERE WAS SOME RESERVATION ABOUT THE APPLICATION OF THIS POLICY TO CASES WHERE DISCRIMINATION FOR "UNION" OR "ANTI-UNION" ACTIVITIES WAS ALLEGED, IT IS CLEAR FROM THE PITT STREET HOTEL LIMITED CASE 1963, C.C.H. LABOUR LAW REPORTER, VOL. 1, ¶16,275, C.L.S. 76-929, THAT EXCEPT IN THE CIRCUMSTANCES THERE OUTLINED (I.E. COLLUSION BETWEEN UNION AND EMPLOYER), ALLEGATIONS SUCH AS HAVE BEEN MADE IN THE PRESENT CASE



STATISTICAL TABLES FOR JUNE 1964

TABLE 1

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JUNE 1964	1ST 3 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	80	225	185
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	23	25
III. DECLARATION OF SUCCESSOR STATUS		1	1
IV. CONCILIATION SERVICES	110	343	374
V. DECLARATION THAT STRIKE UNLAWFUL	5	12	6
VI. DECLARATION THAT LOCK OUT UNLAWFUL	-	1	-
VII. CONSENT TO PROSECUTE	8	17	69
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT SECTION 65)	11	27	38
X. MISCELLANEOUS	3	4	2
	<u>227</u>	<u>653</u>	<u>700</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JUNE 1964	1ST 3 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	118	301	279

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR  
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JUNE 1964	1ST 3 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	74	218	220
II. DECLARATION TERMINATING BARGAINING RIGHTS	21	32	36
III. DECLARATION OF SUCCESSOR STATUS	1	4	2
IV. CONCILIATION SERVICES	96	381	393
V. DECLARATION THAT STRIKE UNLAWFUL	11	11	3
VI. DECLARATION THAT LOCKOUT UNLAWFUL	-	1	-
VII. CONSENT TO PROSECUTE	8	14	64
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	40	42
IX. MISCELLANEOUS	-	5	2
TOTAL	<u>220</u>	<u>706</u>	<u>762</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JUNE 1964	1ST 3 MONTHS 1964-65	FISCAL YEAR 1963-64	JUNE 1964	1ST 3 MONTHS 1964-65	FISCAL YEAR 1963-64
<u>I. CERTIFICATION</u>						
GRANTED	49	155	153	1893	6012	4965
DISMISSED	18	41	41	1135	3256	1255
WITHDRAWN	7	22	26	697	960	323
	<u>74</u>	<u>218</u>	<u>220</u>	<u>3725</u>	<u>10,228</u>	<u>6543</u>
<u>II. TERMINATION OF</u>						
<u>BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	13	19	27	84	208	686
DISMISSED	7	11	9	163	259	384
WITHDRAWN	1	2	-	18	82	-
	<u>21</u>	<u>32</u>	<u>36</u>	<u>265</u>	<u>549</u>	<u>1070</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		JUNE 1964	1ST 3 MONTHS 1964-65	FISCAL YEAR 1963-64
<u>III. CONCILIATION SERVICES*</u>				
	REFERRED	93	347	377
	DISMISSED	1	20	7
	WITHDRAWN	2	14	9
	TOTAL	<u>96</u>	<u>381</u>	<u>393</u>
<u>IV. DECLARATION THAT STRIKE UNLAWFUL</u>				
	GRANTED	6	6	-
	DISMISSED	2	2	-
	WITHDRAWN	3	3	3
	TOTAL	<u>11</u>	<u>11</u>	<u>3</u>
<u>V. DECLARATION THAT LOCKOUT UNLAWFUL</u>				
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	-	1	-
	TOTAL	<u>-</u>	<u>1</u>	<u>-</u>
<u>VI. CONSENT TO PROSECUTE</u>				
	GRANTED	1	2	17
	DISMISSED	1	2	2
	WITHDRAWN	6	10	45
	TOTAL	<u>8</u>	<u>14</u>	<u>64</u>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JUNE 1964	1ST 3 MONTHS FISCAL YEAR 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	7	6
POST-HEARING VOTE	2	7	22
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	3	5
POST-HEARING VOTE	5	18	20
BALLOTS NOT COUNTED	-	-	1
TOTAL	12	35	54

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JUNE 1964	1ST 3 MONTHS OF FISCAL YEAR 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	3	6	13
TOTAL	3	6	18

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING JULY 1964.

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

7632-63-R: LOBLAW WORKERS' COUNCIL (APPLICANT) V. SUPER CITY LIMITED  
(RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORE AT 4890 DUNDAS STREET WEST, TORONTO, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD DECLARES THAT HARTMANN DIEGEL (MEAT MANAGER) AND MARIE TOMARELLI (HEAD CHECKER) DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND THAT INGO TROUTMANN DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNIT."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, I WOULD HAVE EXCLUDED HARTMANN DIEGEL (MEAT MANAGER) FROM THE BARGAINING UNIT."

8626-64-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. SAVAGE SHOES LIMITED  
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT PRESTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(53 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ASSISTANT FOREMEN BE EXCLUDED FROM THE BARGAINING UNIT...."

"... FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WAREHOUSE CLERKS (PRESENTLY COMPRISING FRANCES EDDYVEAN, IRENE MCKAY, MARGARET SCHEER AND MARILYN SOCKETT) ARE



INCLUDED IN THE BARGAINING UNIT, AND INVENTORY CONTROL CLERKS (PRESENTLY COMPRISING JOAN LAMBERT AND MAURINE CHRISTIAN) ARE EXCLUDED FROM THE BARGAINING UNIT AS PART OF THE MAIN OFFICE."

8628-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. WHITE-RODGERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (75 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8663-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 822 (APPLICANT) V. DISTRICT OF KENORA HOME FOR THE AGED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 940 (INTERVENER).

UNIT No. 1: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, OCCUPATIONAL THERAPISTS, PHYSIOTHERAPISTS, STATIONARY ENGINEERS AND THOSE PRIMARILY ENGAGED AS THEIR HELPERS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT) (GRANTED TO APPLICANT).

(HAVING REGARD TO REPRESENTATION OF PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE RECREATIONAL DIRECTOR IS A PERSON ABOVE THE RANK OF SUPERVISOR."

UNIT No. 2: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT) (GRANTED TO APPLICANT).

UNIT No. 3: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOME FOR THE AGED IN KENORA, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT) (GRANTED TO INTERVENER).

8707-64-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (APPLICANT) V. EL-MAR HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT ITS EL-MAR HOUSE AT HAMILTON." (9 EMPLOYEES IN THE UNIT).

8752-64-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, C.L.C. (APPLICANT) V. BALMORAL HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT ITS BALMORAL HOUSE AT HAMILTON." (4 EMPLOYEES IN THE UNIT).

8753-64-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, C.L.C. (APPLICANT) V. TERMINAL HOTEL (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT ITS TERMINAL HOTEL AT HAMILTON." (7 EMPLOYEES IN THE UNIT).

8756-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 607 (APPLICANT) V. TERRA KRETE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

8768-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197, HAMILTON (APPLICANT) V. CARLETON PUBLIC HOUSE LIMITED (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED IN THE BEVERAGE ROOM OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (4 EMPLOYEES IN THE UNIT).

8769-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 HAMILTON (APPLICANT) V. PARKDALE HOTEL (HAMILTON) LTD. (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE RESPONDENT IN ITS DERBY TAVERN AT HAMILTON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

8784-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 216 (APPLICANT) V. COMBINED ROMAN CATHOLIC SEPARATE SCHOOL BOARD OF THE TOWNSHIP OF TARENTORUS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CARETAKING AND MAINTENANCE OF SCHOOLS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

8794-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FRITZ W. GLITSCH & SONS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT UXBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (68 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8795-64-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION LOCAL OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. STURGEONS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THAT THE RESPONDENT DOES NOT INTEND  
TO PURSUE ITS ALLEGATIONS RESPECTING THE MEMBERSHIP EVIDENCE..."

8796-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DOMINION DAIRIES LIMITED, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF SEALTEST DAIRIES ICE CREAM (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN IN THE EMPLOY OF THE RESPONDENT AT WINDSOR."  
(2 EMPLOYEES IN THE UNIT).

8802-64-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. PAUL LAHAIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN THE TOWNSHIP OF THACKERAY AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SCALERS AND TALLYMEN."  
(78 EMPLOYEES IN THE UNIT).

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE DESCRIBED THE UNIT AS COMPRISING EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN THE DISTRICT OF COCHRANE WITH THE EXCEPTIONS NOTED ABOVE."

8808-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. HARRISON CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

8809-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. KAUMEYER PAPER PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHIPPAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

8813-64-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HAMILTON COTTON COMPANY LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE POWER HOUSE OF THE RESPONDENT AT DUNDAS, SAVE AND EXCEPT CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

8814-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA. LOCAL 1168 (APPLICANT) V. PRAISE INVESTMENTS LTD. (RESPONDENT).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

8815-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

8826-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. OAKVILLE STORAGE AND FORWARDERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

8827-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. WAREHOUSE DELIVERIES (OAKVILLE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

8833-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. RADIO SPEAKERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES AND OFFICE STAFF, LABORATORY STAFF, COST CONTROL CLERK, QUALITY CONTROL SUPERVISOR AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (112 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LABORATORY STAFF, COST CONTROL CLERK AND QUALITY CONTROL SUPERVISOR ARE EXCLUDED FROM THE BARGAINING UNIT."

8839-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. BETTERIDGE SMITH CONSTRUCTION Co. LTD.

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE FEDERAL BUILDING IN TIMMINS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

8840-64-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION LOCAL 28 (APPLICANT) V. G. FILIPINI, BRICKWORK AND MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONE MASONS AND STONE MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT THE CITY OF SUDBURY AND WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING,



SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

8854-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE VILLAGE OF FOREST HILL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE VILLAGE OF FOREST HILL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE SUPERINTENDENT OF SEWAGE, SUPERINTENDENT OF PARKS, SUPERINTENDENT OF ROADS, SUPERINTENDENT OF SANITARY INSPECTION AND SUPERINTENDENT OF INCINERATORS EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT."

8856-64-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. THE RICHVALE CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKHAM TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

8877-64-R: FOOD HANDLER'S LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

8886-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CORNWALL'S EASTSIDE DAIRY COMPANY LIMITED (RESPONDENT).

UNIT No. 1: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (32 EMPLOYEES IN THE UNIT).

UNIT No. 2: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MANAGER, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (3 EMPLOYEES IN THE UNIT).

8893-64-R: UNITED BAKERY WORKERS ASSOCIATION, LOCAL NO. 58 (C.L.A.C.) (APPLICANT) V. HOLLANDIA BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MOUNT BRYDGES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRIVER SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (32 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8910-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. RANEY BRADY McCLOY LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND SAVE AND EXCEPT THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA LOCAL 183." (9 EMPLOYEES IN THE UNIT).

8921-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 265 A.F.L.-C.I.O., CLC (APPLICANT) v. LAKEHEAD COLLEGE OF ARTS SCIENCE & TECHNOLOGY (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL TEACHING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (8 EMPLOYEES IN THE UNIT).

8922-64-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) v. STEFAN PANIW, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF CECIL PUBLIC HOUSE (RESPONDENT).

UNIT" "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE RESPONDENT IN THE BEVERAGE ROOMS OF THE CECIL PUBLIC HOUSE AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

8924-64-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. KING PAVING AND MATERIALS LIMITED, CONSTRUCTION DIVISION (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WORKING OUT OF NELSON QUARRIES' YARD AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

8938-64-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONT. (APPLICANT) v. SAVOY HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE RESPONDENT IN THE BEVERAGE ROOMS OF THE SAVOY HOUSE AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS, AND PERSONS ABOVE THE RANK OF MANAGER." (4 EMPLOYEES IN THE UNIT).

8954-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CUSTOM-AIRE ALUMINUM LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

8956-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS KORAH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CARETAKING AND MAINTENANCE OF SCHOOLS, SAVE AND EXCEPT SUPERVISORS OF CARETAKERS, PERSONS ABOVE THE RANK OF SUPERVISOR OF CARETAKERS AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

8966-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. BETTERIDGE-SMITH CONSTRUCTION CO. LTD. (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

8990-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. SORDINI CONCRETE LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE APPLICANT SEEKS ONLY PART OF THE COUNTY OF PRESCOTT THE BOARD HAS FOUND THAT THE WHOLE OF THE COUNTY, TOGETHER WITH THE COUNTY OF CARLETON (EXCEPT THE TOWNSHIP OF MARLBOROUGH) AND THE COUNTY OF RUSSELL CONSTITUTE AND APPROPRIATE AREA. THE BOARD SEES NO REASON FOR DEPARTING FROM THAT AREA IN THE PRESENT CASE..."

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

8688-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GUARDS, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (448 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST		448
NUMBER OF BALLOTS CAST		436
NUMBER OF BALLOTS SEGREGATED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	234	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	201	



8846-64-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BRITISH LEAF TOBACCO COMPANY OF CANADA, LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER) V. LOCAL 944, I.U.O.E. (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS REGULARLY EMPLOYED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT CHATHAM, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	4
NUMBER OF BALLOTS CAST	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944	1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

8583-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. HARRISON HEWITT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	9
NUMBER OF BALLOTS CAST	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY 1964.

No Vote Conducted

7968-63-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION (RESPONDENT). (94 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 183 ).

8127-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CANADIAN ENGINEERING AND CONTRACTING CO. LIMITED (RESPONDENT). (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE QUESTION AS TO WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT IN THE CIRCUMSTANCES OF THIS CASE HAS CAUSED THE BOARD CONSIDERABLE DIFFICULTY. REGARDLESS OF WHAT THE RESPONDENT CHOSE TO CALL ITS EMPLOYEES, I.E., ENGINEERING CONSTRUCTORS, IT SEEMS CLEAR THAT THE THREE PERSONS WHOM THE APPLICANT CLAIMS SHOULD FORM THE UNIT ARE CARPENTERS.



IT IS EQUALLY CLEAR THAT THE WORK THEY WERE ENGAGED TO PERFORM CONSISTED OF WORK CLAIMED BY THE CARPENTERS' UNION AS FALLING WITHIN ITS JURISDICTION. THE DIFFICULTY HERE IS CAUSED BY THE FACT THAT ON THE BASIS OF THE EVIDENCE BEFORE US, THE SIX OTHER EMPLOYEES WERE UNQUESTIONABLY ENGAGED IN PERFORMING SUBSTANTIALLY THE SAME WORK EVEN THOUGH THEY DID NOT CLAIM TO BE CARPENTERS.

AFTER DUE CONSIDERATION AND IN THE SPECIAL CIRCUMSTANCES OF THIS CASE, WE HAVE COME TO THE CONCLUSION THAT THE APPROPRIATE UNIT MUST INCLUDE ALL THE NINE EMPLOYEES WHO WERE WORKING ON THE DATE OF THE MAKING OF THE APPLICATION AND WHOSE NAMES ARE INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

SINCE THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR ONLY THREE OF THE NINE PERSONS WHOSE NAMES APPEAR ON THE RESPONDENT'S LIST, IT FOLLOWS THAT THE APPLICANT HAD LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE AS MEMBERS AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

ACCORDINGLY, THE APPLICATION IS DISMISSED."

BOARD MEMBER D.M. STOREY DISSENTED AND SAID:-

"I DISSENT. IN THE CIRCUMSTANCES OF THIS CASE I WOULD HAVE CONFINED THE UNIT AT THE DATE OF THE MAKING OF THE APPLICATION TO THREE PERSONS AND THUS WOULD HAVE CERTIFIED THE APPLICANT."

8630-64-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902, OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT) V. SUDBURY GENERAL WORKERS UNION, LOCAL 101 C.L.C. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN SUDBURY AND SUBURBAN AREAS, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (140 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8644-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ABERFOYLE SAND AND GRAVEL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PUSLINCH TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

8790-64-R: GUELPH DAIRYING UNION (APPLICANT) V. CHARLES YEATES & COMPANY LIMITED (THE ROYAL DAIRY) (RESPONDENT). (58 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION THE APPLICANT SUBMITTED AS EVIDENCE OF MEMBERSHIP CARBON COPIES OF 48 RECEIPTS BOUND IN 2 STANDARD STATIONERS RECEIPT BOOKS. THESE RECEIPTS ARE EACH DATED, THEY SHOW THE NAME AND JOB DESCRIPTION OF THE PAYER, THEY INDICATE A PAYMENT OF \$1.00 IN EACH CASE AND THEY ARE SIGNED BY THE COLLECTOR AND COUNTERSIGNED BY THE PAYER. THE NAME OF THE APPLICANT DOES NOT APPEAR AND THERE IS NO INDICATION THAT THE MONEY WAS RECEIVED BY IT OR ON ITS BEHALF. THIS WAS THE ONLY EVIDENCE OF MEMBERSHIP SUBMITTED. IN PARTICULAR, THE APPLICANT HAS SUBMITTED NO EVIDENCE THAT ANY EMPLOYEES HAVE APPLIED FOR MEMBERSHIP IN OR HAVE BEEN ACCEPTED AS MEMBERS OF THE APPLICANT. THE EVIDENCE WHICH HAS BEEN SUBMITTED AS EVIDENCE OF MEMBERSHIP DOES NOT MEET THE STANDARDS WHICH THE BOARD REQUIRES TO BE MET IN APPLICATIONS FOR CERTIFICATION. SEE EASTERN ONTARIO TILE & TERRAZZO COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH, 1963, P. 516.

HAVING REGARD TO THE ABOVE FINDING, IT IS NOT NECESSARY TO CONSIDER THE STATUS OF THE APPLICANT.

THE APPLICATION IS DISMISSED."

8864-64-R: UNITED PAPERMAKERS & PAPERWORKERS LOCAL 894 (APPLICANT) v. 1860 ASPHALT ROOFING PRODUCTS LTD. (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER). (29 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE THE 15TH DAY OF NOVEMBER, 1963, AND EXPIRING ON THE 15TH DAY OF NOVEMBER, 1965. IN THE CIRCUMSTANCES THE APPLICATION IS UNTIMELY UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY DISMISSED."

8865-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. KORAH SEPARATE SCHOOL BOARD (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 9, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE, THE APPLICATION IS THEREFORE DISMISSED."

8944-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION #131 (APPLICANT) v. SANSONE FRUIT COMPANY LIMITED (RESPONDENT). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 184 )

DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

8544-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1256 (APPLICANT) V. BERT WESLEY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS WHILE EMPLOYED AT THE RESPONDENT'S STORE, SHOP AND YARD." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED	
VOTERS' LIST	8
NUMBER OF BALLOTS CAST	8
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	5

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"TELEGRAMS WERE FILED WITH THE BOARD OBJECTING TO THE APPLICATION AND PURPORTING TO HAVE BEEN SENT BY EMPLOYEES OF THE RESPONDENT. ASSUMING, BUT WITHOUT DECIDING, THAT THESE DOCUMENTS COMPLY WITH SECTION 50 OF THE BOARD'S RULES OF PROCEDURE (AND SEE PARAGRAPHS 4 AND 5 OF FORM 57), AND THAT AFTER DUE INQUIRY BY THE BOARD AS TO THE CIRCUMSTANCES CONCERNING THEIR ORIGIN AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED, THE BOARD WAS TO ACCORD THEM FULL WEIGHT, THE RESULT WOULD BE THAT THE BOARD WOULD DIRECT A REPRESENTATION VOTE RATHER THAN CERTIFY THE UNION OUTRIGHT. FURTHERMORE, ON THE BASIS OF THE MEMBERSHIP EVIDENCE AS SET OUT ABOVE IT IS CLEAR THAT SECTION 7 (5) OF THE LABOUR RELATIONS ACT WOULD NOT BE APPLICABLE. IN THE PRESENT CASE THE APPLICANT BY VIRTUE OF SECTION 7 (2) OF THE ACT IS NOT ENTITLED TO OUTRIGHT CERTIFICATION BUT ONLY TO A REPRESENTATION VOTE SINCE IT DOES NOT HAVE MORE THAN FIFTY-FIVE PER CENT MEMBERSHIP IN THE BARGAINING UNIT. THERE IS THEREFORE NO NECESSITY FOR THE BOARD TO SCHEDULE A HEARING TO INQUIRE INTO THE OBJECTIONS FILED BY TELEGRAM..."

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8592-64-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (APPLICANT) V. KAYSON PLASTIC & CHEMICALS LIMITED (RESPONDENT).

UNIT: "ALL LABORATORY EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).



NUMBER OF NAMES ON REVISED VOTER'S LIST		8
NUMBER OF BALLOTS CAST		8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT		6

8495-64-R: GENERAL TRUCK DRIVERS' LOCAL UNION 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BRANTFORD IRON & METAL CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTER'S LIST		6
NUMBER OF BALLOTS CAST		6
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT		5

8584-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT, V. STRANO'S WHOLESALE FRUIT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TERRITORIAL SALESMEN, AND RETAIL STORE EMPLOYEES." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		7
NUMBER OF BALLOTS CAST		7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT		7

8645-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PRESTON SAND AND GRAVEL CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		7
NUMBER OF BALLOTS CAST		6
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT		4

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. I AM NOT PREPARED TO HOLD THAT THE DOCUMENT SUBMITTED IN OPPOSITION TO THIS APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE AND ACCORDINGLY, I WOULD HAVE CERTIFIED THE APPLICANT."

8754-64-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, C.L.C. (APPLICANT) V. DA-NITE TAVERN (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE RESPONDENT IN ITS BEVERAGE ROOM AT STONEY CREEK, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	7
NUMBER OF BALLOTS CAST	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY 1964

8687-64-R: MUTUEL EMPLOYEES ASSOCIATION LOCAL 528 BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. SIMCOE DRIVING PARK ASSOCIATION LTD. (RESPONDENT). (167 EMPLOYEES).

8847-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. TRANSPROVINCIAL FREIGHT CARRIERS LTD. (RESPONDENT). (11 EMPLOYEES)

8878-64-R: GENERAL TRUCK DRIVERS, LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. KING PAVING AND MATERIALS LIMITED (RESPONDENT). (20 EMPLOYEES).

8889-64-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902, OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS, (APPLICANT) V. BELTON MOTOR HOTEL LIMITED (RESPONDENT). (11 EMPLOYEES).

8899-64-R: LOCAL 101, OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. STERLING DRUG MANUFACTURING (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER). (4 EMPLOYEES).

8923-64-R: THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) V. I K C ROOFING PRODUCTS LIMITED, BRAMPTON, ONTARIO (RESPONDENT). (2 EMPLOYEES).



APPLICATIONS FOR TERMINATION DISPOSED OF DURING JULY 1964.

8885-64-R: STARK TRUCK SERVICE (LONDON) LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

(RE: STARK TRUCK SERVICE (LONDON) LIMITED,  
LONDON, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 185 )

8947-64-R: VAIL & SHEPPARD, CARTAGE (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 938, GENERAL TRUCK DRIVERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (GRANTED). (30 EMPLOYEES).

(RE: VAIL & SHEPPARD CARTAGE,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT ON JULY 15TH, 1964.

THE RESPONDENT BY LETTER DATED JULY 27TH, 1964, STATED AS FOLLOWS:

"I WISH TO INFORM YOU AT THIS TIME THAT LOCAL 938 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, DOES NOT WISH TO RETAIN BARGAINING RIGHTS FOR THE ABOVE MENTIONED COMPANY, AND WILL, THEREFORE, NOT MAKE AN APPEARANCE AT THE HEARING SCHEDULED FOR THURSDAY, JULY 30TH, 1964."

THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF VAIL & SHEPPARD CARTAGE AT METROPOLITAN TORONTO, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JULY

8695-64-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LONDON STEEL CONSTRUCTION COMPANY, LONDON, ONTARIO (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT.

8849-64-M: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264, (APPLICANT) V. CHRISTIE'S BREAD DIVISION OF NABISCO LIMITED (RESPONDENT) (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE PARTIES HAVING JOINTLY APPLIED FOR AN EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THEM PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT; THE BOARD CONSENTS TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENT DATED THE 15TH DAY OF MARCH, 1963, TERMINATION TO BE EFFECTIVE ON THE 31ST DAY OF JULY, 1964.

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JULY 1964.

8793-64-U: BEAVER SHIRT AND SPORTSWEAR, CRAFT SPORTSWEAR LIMITED, ELITE SPORTSWEAR MANUFACTURING COMPANY LIMITED, OUTDOOR OUTFITS LIMITED, UNITED SPORTSWEAR LIMITED (APPLICANTS) V. UNITED GARMENT WORKER'S OF AMERICA, LOCAL 253 (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 187 )

8894-64-U: BARBER DIE CASTING CO. LIMITED (APPLICANT) V. FRED DELORME ET AL, PERSONALLY AND ON BEHALF OF ALL EMPLOYEES OF THE APPLICANT AT HAMILTON SAVE AND EXCEPT SALARIED AND OFFICE EMPLOYEES, SALESMEN, DRAFTSMEN AND FOREMEN (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN ORALLY AT THE HEARING, THIS APPLICATION IS DISMISSED."

8935-64-U: BARBER DIE CASTING CO. LIMITED (APPLICANT) V. RONALD FORSTER ET AL (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS APPLICATION IS WITHDRAWN WITH RESPECT TO GEORGE MARACLE, ONE OF THE RESPONDENTS HEREIN, AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENTS BY LEAVE OF THE BOARD.

FOR THE REASONS GIVEN ORALLY AT THE HEARING IN THIS MATTER, THE BOARD FINDS THAT THE RESPONDENTS WERE AT ALL RELEVANT TIMES EMPLOYEES OF THE APPLICANT AND THE CESSATION OF WORK AND REFUSAL TO WORK OR TO CONTINUE TO WORK BY THE RESPONDENTS CONSTITUTED A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT IN THAT IT WAS A CESSATION OF WORK, A REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING.

IN THE CIRCUMSTANCES OF THIS CASE, AND PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENTS DID ON AND AFTER JULY 3RD, 1964 ENGAGE IN AN UNLAWFUL STRIKE AT HAMILTON CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT."

APPLICATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING JULY 1964.

8989-64-U: LOCAL 173 OF THE INTERNATIONAL ALLIANCE THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA (APPLICANT) V. MR. NORMAN PUSHELL (RESPONDENT) (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE, THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THE RESPONDENT CALLED OR AUTHORIZED A LOCK-OUT ON AND AFTER JULY 21ST, 1964 WITHIN THE MEANING OF SECTION 1 (1) (G) OF THE LABOUR RELATIONS ACT.

THE APPLICATION ACCORDINGLY IS DISMISSED."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY 1964.

8276-64-U: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) V. THE HAMILTON COTTON COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 190)

8792-64-U: BEAVER SHIRT AND SPORTSWEAR, CRAFT SPORTSWEAR LIMITED, ELITE SPORTSWEAR MANUFACTURING COMPANY LIMITED, OUTDOOR OUTFITS LIMITED, UNITED SPORTSWEAR LIMITED (APPLICANT) V. UNITED GARMENT WORKER'S OF AMERICA, LOCAL 253, B.T. WHYTE, INTERNATIONAL REPRESENTATIVE (RESPONDENT). (WITHDRAWN).

8863-64-U: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS; OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WILLIAM JUDGES (RESPONDENT). (WITHDRAWN).

8867-64-U: TEAMSTERS' LOCAL NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS; OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WALLY MACMILLAN (RESPONDENT). (WITHDRAWN).

8868-64-U: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS; OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RICHVALE CARTAGE (1964) LIMITED (RESPONDENT). (WITHDRAWN).

8869-64-U: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS; OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. STANLEY STANKIEWICZ (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
JULY 1964

7749-63-U: JOHN H. MONK (COMPLAINANT) V. STANLEY NEWMARCH, AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION #46 (RESPONDENTS).

8593-64-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 (COMPLAINANT) V. POOLE'S QUALITY FISH MARKET (RESPONDENT).

8594-64-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (COMPLAINANT) V. RIVERSIDE FISHERIES LIMITED (RESPONDENT).

8807-64-U: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS INTERNATIONAL UNION, LOCAL 197 (COMPLAINANT) V. BALMORAL HOUSE (RESPONDENT).

8838-64-U: GENERAL TRUCK DRIVERS UNION, LOCAL 938 (COMPLAINANT) V. TRANSPROVINCIAL FREIGHT CARRIERS LTD (RESPONDENT).

8866-64-U: DISTRICT 50, U. M. W. A., REGION 75 (COMPLAINANT) V. GIDON INDUSTRIES LTD. (RESPONDENT).

8901-64-U: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (COMPLAINANT) V. COLONIAL HOUSE (RESPONDENT).

8930-64-U: RIVERSIDE FISHERIES LIMITED (COMPLAINANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD DECISION - CERTIFICATION.

8481-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. POOLE'S QUALITY FISH MARKET (RESPONDENT). (GRANTED MAY 1964).

ON JULY 13, 1964 THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT'S REQUEST IS DENIED."

8482-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 880, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RIVERSIDE FISHERIES LTD. (RESPONDENT). (GRANTED MAY 1964).

ON JULY 13, 1964 THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT'S REQUEST IS DENIED."

INDEXED ENDORSEMENTS - CERTIFICATION.

7968-63-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION (RESPONDENT).



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE PROVISIONS OF SECTION 2(1) OF THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION ACT, 1955, STATUTES OF ONTARIO 1955, c. 59, OF SECTION 2(1) OF THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION ACT, R.S.O. 1960, c. 279, THE NATURE OF THE FUNCTIONS PERFORMED BY THE COMMISSION, THE PERSONS FOR WHOSE BENEFIT THE COMMISSION RENDERS SERVICE, THE NATURE AND EXTENT OF THE POWERS ENTRUSTED TO IT AND THE NATURE AND DEGREE OF CONTROL OVER THE ACTIVITIES OF THE COMMISSION EXERCISABLE OR RETAINED BY THE CROWN, AND IN THIS CONNECTION HAVING REGARD PARTICULARLY TO THE PROVISIONS OF SECTIONS 4, 5 AND 7 OF THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION ACT, R.S.O. 1960, c. 270, WE ARE OF OPINION THAT WE HAVE NO JURISDICTION TO ENTERTAIN THIS APPLICATION AND THE PROCEEDING IS ACCORDINGLY TERMINATED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE RELEVANT LEGISLATION GIVES TO THE COMMISSION VERY CONSIDERABLE POWERS WHICH ARE EXERCISED INDEPENDENTLY BY THE COMMISSION ITSELF WITHOUT ANY SUBSTANTIAL CONTROL BY THE GOVERNMENT. INDEED, ACCORDING TO THE STATEMENT OF FACTS FILED BY COUNSEL FOR THE COMMISSION, THE BULK OF THE EMPLOYEES OF THE COMMISSION WITH WHOM WE ARE CONCERNED ARE NOT APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL, AS IS PROVIDED FOR IN SECTION 4 OF THE ONTARIO-ST. LAWRENCE DEVELOPMENT COMMISSION ACT, BUT BY THE COMMISSION ITSELF AND THEY ARE NOT CLASSIFIED IN ACCORDANCE WITH THE PUBLIC SERVICES ACT AS SECTION 4 OF THE FIRST MENTIONED ACT REQUIRES. I WOULD HAVE FOUND THAT THIS BOARD DOES HAVE JURISDICTION TO ENTERTAIN THIS APPLICATION."

8944-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION #141  
(APPLICANT) V. SANSONE FRUIT COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT AND THE REPRESENTATIONS CONTAINED IN THE LETTER FROM THE RESPONDENT'S SOLICITORS, DATED JULY 17TH, 1964, THE BOARD FINDS THAT THE APPLICANT IS BY REASON OF A TRANSFER OF JURISDICTION THE SUCCESSOR TO TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 880, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 880, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, EFFECTIVE AS OF THE FIRST DAY OF OCTOBER, 1960 AND REMAINED IN FORCE UNTIL THE FIRST DAY OF APRIL, 1962 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE."

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT IS THE SUCCESSOR TO TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 880, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, WHICH WAS A PARTY TO THE AGREEMENT WITH THE RESPONDENT REFERRED TO ABOVE, WILL ISSUE.



IN VIEW OF THE ABOVE FINDING, NO PURPOSE WOULD BE SERVED BY GRANTING APPLICATION FOR CERTIFICATION REQUESTED BY THE APPLICANT AND THIS APPLICATION IS ACCORDINGLY TERMINATED."

INDEXED ENDORSEMENT - TERMINATION.

8885-64-R: STARK TRUCK SERVICE (LONDON) LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

(RE: STARK TRUCK SERVICE (LONDON) LIMITED,  
LONDON, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY THE EMPLOYER COMPANY FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION UNDER SUBSECTION (2) OF SECTION 45 OF THE LABOUR RELATIONS ACT.

THE UNION WAS CERTIFIED BY THE BOARD ON DECEMBER 3RD, 1963, FOR A UNIT OF THE EMPLOYEES OF THE COMPANY. THE RESPONDENT GAVE NOTICE OF ITS DESIRE TO BARGAIN WITH THE COMPANY BY LETTER DATED DECEMBER 10TH, 1963. THE PARTIES MET ON JANUARY 6TH, 1964, BUT NO BARGAINING TOOK PLACE AS THE UNION WAS NOT REPRESENTED BY A BARGAINING COMMITTEE. THE PARTIES MET AGAIN ON JANUARY 16TH, BUT AGAIN NO BARGAINING TOOK PLACE AS THE UNION WAS NOT REPRESENTED BY A BARGAINING COMMITTEE. A LATER MEETING SCHEDULED FOR FEBRUARY 20TH WAS CANCELLED WHEN THE UNION'S ARRANGEMENTS FOR A BARGAINING COMMITTEE BROKE DOWN. ON APRIL 29TH THE UNION HAVING, IT SEEMS, MADE ARRANGEMENTS FOR A BARGAINING COMMITTEE REQUESTED A MEETING. F. W. MURRAY, WHO REPRESENTED THE COMPANY, REPLIED THAT HE WOULD BE AVAILABLE ON THE 5TH OR 6TH OF MAY BUT THAT HE WOULD HAVE TO CONSULT WITH HIS CLIENT BEFORE ARRANGING A MEETING. THEN ON THE 5TH OF MAY THE APPLICANT FILED AN APPLICATION UNDER SECTION 45 (2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. FOLLOWING A HEARING HELD ON THE 21ST OF MAY, 1964, THE BOARD, ON THE 18TH DAY OF JUNE, DISMISSED THAT APPLICATION, BOARD FILE NO. 8440-64-R. THE RECORD WAS ENDORSED IN PART AS FOLLOWS:-

IN THE APPLICATION BEFORE US, THE UNION AFTER GIVING NOTICE DID SEEK TO BARGAIN WITH THE COMPANY AND MEETINGS WERE ARRANGED FOR JANUARY 6TH AND FEBRUARY 20TH. BARGAINING DID NOT COMMENCE ON EITHER OF THE TWO DATES, HOWEVER, BECAUSE THE UNION DID NOT HAVE A BARGAINING COMMITTEE. THE EXPLANATION OF THE UNION FOR THE SUBSEQUENT PERIOD OF OVER TWO MONTHS WHEN NO FURTHER EFFORTS WERE MADE TO MEET WITH THE COMPANY IS THAT ITS BARGAINING COMMITTEE WAS STILL NOT AVAILABLE. WHEN, HOWEVER, THE UNION AGAIN HAD A BARGAINING COMMITTEE, IT PROMPTLY REQUESTED A MEETING WITH THE COMPANY.

HAVING REGARD TO ALL THE EVIDENCE, WE ARE NOT SATISFIED THAT THE UNION HAS BEEN SO REMISS IN PURSUING THE INTERESTS OF THE EMPLOYEES CONCERNED THAT THE BOARD SHOULD EXERCISE ITS DISCRETION AND MAKE THE DECLARATION SOUGHT BY THE COMPANY. IN ARRIVING AT OUR DECISION, AN IMPORTANT CONSIDERATION WAS THE FACT THAT THE COMPANY ONLY MADE ITS APPLICATION AFTER THE UNION INFORMED THE COMPANY THAT IT HAD A COMMITTEE AND WISHED TO MEET AND BARGAIN. FURTHER, THERE IS NO EVIDENCE THAT THE COMPANY WAS PREJUDICED IN ANY WAY BY REASON OF DELAY IN COMMENCING TO BARGAIN. WE WOULD MENTION ALSO THAT THE PURPOSE OF SECTION 45 IS TO PROTECT THE EMPLOYEES, AND, IN THE PROPER CASE, THE EMPLOYER. IT IS NOT, HOWEVER, TO BE USED TO PENALIZE A UNION FOR DELAY IN COMMENCING TO BARGAIN. (SEE DOMINION STORES CASE, (1956) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-'59, ¶16,047, C.L.S. 76-529).

ON THE 22ND OF JUNE MR. MURRAY WROTE TO MR. BRIGGS, THE REPRESENTATIVE OF THE UNION, ASKING FOR A MEETING WHICH WAS ARRANGED FOR THE 3RD OF JULY. THAT MEETING WAS HELD BUT NO BARGAINING TOOK PLACE AS THE UNION WAS NOT REPRESENTED BY A BARGAINING COMMITTEE. THIS APPLICATION WAS MADE ON JULY 7TH, 1964.

IT SEEMS THAT THE EMPLOYEE MEMBER OF THE UNION BARGAINING COMMITTEE WAS TO HAVE BEEN ONE LUNDY. ALTHOUGH EARLIER ATTEMPTS TO FORM A BARGAINING COMMITTEE BROKE DOWN BECAUSE OF LUNDY'S INABILITY OR UNWILLINGNESS TO ACT, THERE WAS NO EVIDENCE TO SUGGEST THAT LUNDY WOULD NOT HAVE BEEN AVAILABLE FOR THE MEETING REQUESTED ON APRIL 29TH, AND IT SEEMS THAT THIS WAS AN IMPORTANT CONSIDERATION IN THE BOARD'S DECISION ON THE EARLIER APPLICATION.

FOLLOWING THE HEARING ON THE EARLIER APPLICATION AT WHICH LUNDY GAVE EVIDENCE AND APPARENTLY SOME TIME IN LATE MAY OR EARLY JUNE LUNDY WAS DISCHARGED BY THE COMPANY. PROCEEDINGS UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WERE INSTITUTED WITH REGARD TO LUNDY'S DISCHARGE BUT BY THE DATE OF THE HEARING OF THIS APPLICATION THE PARTIES HAVE NOT BEEN ADVISED AS TO THE OUTCOME OF THESE PROCEEDINGS. IT WOULD SEEM THEN THAT THE BARGAINING COMMITTEE WITH WHICH THE UNION HAD HOPED TO PROCEED COULD NOT BE CONSTITUTED, ALTHOUGH THE UNION MAY HAVE HOPED THAT LUNDY WOULD BE REINSTATED AND THE COMMITTEE AT LAST FORMED. IN ANY EVENT, BARGAINING DID NOT TAKE PLACE AT THE MEETING HELD ON JULY 3RD. HAVING IN MIND ALL THESE CIRCUMSTANCES CAN IT NOW BE SAID THAT THE UNION HAS BEEN SO REMISS IN PURSUING THE INTERESTS OF THE EMPLOYEES CONCERNED THAT THE BOARD SHOULD EXERCISE ITS DISCRETION AND MAKE THE DECLARATION SOUGHT BY THE COMPANY?

THE UNION HAD HOPED TO APPEAR AT THE JULY 3RD MEETING WITH A BARGAINING COMMITTEE. THE HASTY APPLICATION BY THE COMPANY FOLLOWING THE MEETING OF JULY 3RD LEFT NO TIME FOR THE CANVASSING OF THE EMPLOYEES BY THE UNION WITH A VIEW TO THE FORMATION OF A NEW BARGAINING COMMITTEE. WHILE IT MAY WELL BE THAT THE UNION WAS MISGUIDED IN PINNING ITS HOPES ON MR. LUNDY AS MEMBER OF THE COMMITTEE SOME REASONABLE OPPORTUNITY SHOULD HAVE BEEN GIVEN THE UNION TO FORM A RECONSTITUTED COMMITTEE.

THE BOARD IS MINDFUL OF THE CONSIDERATION URGED BY MR. MURRAY ON BEHALF OF THE APPLICANT THAT THE COMPANY MAY SUFFER SOME PREJUDICE AS A RESULT OF THE FAILURE OF THE UNION TO BARGAIN FOR A PROTRACTED PERIOD OF TIME. THE COMPANY IS, OF COURSE, INHIBITED BY THE PROVISIONS OF THE LABOUR RELATIONS ACT FROM MAKING CHANGES IN WAGES WORKING CONDITIONS WHICH IT MAY CONSIDER TO BE IN ITS BEST INTERESTS. IT DOES NOT APPEAR, HOWEVER, THAT THE COMPANY DREW THE ATTENTION OF THE UNION TO ANY HARDSHIP SUFFERED BY IT IN THESE CIRCUMSTANCES OR THAT IT SOUGHT THE CONSENT OF THE UNION TO MAKE SUCH CHANGES. IT WOULD BE REASONABLE TO EXPECT THE COMPANY TO POINT OUT TO THE UNION THAT IT WAS BEING PREJUDICED AND THAT AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WOULD BE MADE IF BARGAINING COULD NOT TAKE PLACE WITHIN A REASONABLE TIME. HAVING IN MIND THE HISTORY OF MEETINGS BETWEEN THESE PARTIES AND THE REPEATED FAILURE OF THE UNION TO PRODUCE A BARGAINING COMMITTEE, THAT TIME NEED NOT BE LONG. THE BOARD IS OF THE OPINION THAT UNLESS THE UNION IS ABLE TO MEET AND BARGAIN WITHIN A REASONABLE TIME IN THE SENSE ABOVE NOTED AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WOULD BE APPROPRIATE. IN ALL THE CIRCUMSTANCES, HOWEVER, THE BOARD IS OF THE OPINION THAT THIS IS NOT A CASE IN WHICH IT SHOULD EXERCISE ITS DISCRETION AND ISSUE A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION.

THE APPLICATION ACCORDINGLY IS DISMISSED."

INDEXED ENDORSEMENT - STRIKE UNLAWFUL.

8793-64-U: BEAVER SHIRT AND SPORTSWEAR, CRAFT SPORTSWEAR LIMITED, ELITE SPORTSWEAR MANUFACTURING COMPANY LIMITED, OUTDOOR OUTFITS LIMITED, UNITED SPORTSWEAR LIMITED (APPLICANTS) V. UNITED GARMENT WORKER'S OF AMERICA, LOCAL 253 (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT UNION CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANTS.

THE PARTIES AGREED THAT THE APPLICANTS WERE MEMBERS OF THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION AND WERE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE UNITED GARMENT WORKERS OF AMERICA, LOCAL 253 (THE RESPONDENT HEREIN) AND THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION FOR A TERM WHICH ENDED APRIL 30TH, 1964.

THE PARTIES FURTHER AGREED THAT FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER, A CONCILIATION BOARD WAS APPOINTED TO ASSIST THEM IN THEIR NEGOTIATIONS FOR A RENEWAL OF THE COLLECTIVE AGREEMENT, BUT AS OF JUNE 18TH, 1964, THE DATE OF THIS APPLICATION, THE CONCILIATION BOARD HAD NOT MET.

THE RESPONDENT ADMITTED THAT AT A MEETING OF ITS MEMBERS ON JUNE 10TH, 1964, A RESOLUTION WAS ADOPTED BY THE RESPONDENT WHEREIN THE MEMBERS OF THE RESPONDENT WHO ARE EMPLOYEES OF THE APPLICANTS RESOLVED NOT TO WORK OVERTIME UNTIL A NEW COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO BETWEEN THE PARTIES.



THE RESPONDENT FURTHER ADMITTED THAT ON JUNE 11TH, 1964, EACH OF THE APPLICANTS WAS ADVISED OF THE RESOLUTION ADOPTED BY THE RESPONDENT BY SIMILAR LETTERS, ON THE RESPONDENT'S LETTERHEAD OVER SIGNATURE OF AN INTERNATIONAL REPRESENTATIVE OF THE RESPONDENT, WHICH READ AS FOLLOWS:

THE MEMBERSHIP MEETING OF JUNE 10, 1964 INSTRUCTED ITS OFFICERS TO ADVISE THEIR EMPLOYERS OF THEIR DECISION.

- (1) THAT NEGOTIATIONS TAKE PLACE ON THE BASIS OF THEIR PRESENT AGREEMENT ONLY.
- (2) THAT NO OVERTIME BE WORKED UNTIL AN AGREEMENT HAD BEEN SIGNED.
- (3) THAT NO WORK CARDS BE ISSUED DURING THIS PERIOD.

THE PARTIES FURTHER ADMITTED THAT ON JUNE 17TH, 1964 THE NATIONAL GARMENT MANUFACTURERS ASSOCIATION ON BEHALF OF THE APPLICANTS INVOKED THE ARBITRATION PROCEDURE, WITH REFERENCE TO THE REFUSAL OF THE EMPLOYEES TO WORK OVERTIME, UNDER THE TERMS OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE.

THE APPLICANTS THROUGH THEIR WITNESSES TESTIFIED THAT IT WAS THE USUAL PRACTICE OF EACH OF THE APPLICANTS TO HAVE CERTAIN EMPLOYEES WORK OVERTIME MONDAY, TUESDAY, WEDNESDAY AND THURSDAY FOR ONE HOUR AND ALSO TO WORK OVERTIME ON SATURDAY MORNING. ADDITIONAL OVERTIME WAS WORKED BY OTHER EMPLOYEES FROM TIME TO TIME AS REQUIRED. THE APPLICANTS' WITNESSES FURTHER TESTIFIED THAT SINCE JUNE 11TH, 1964, THEIR EMPLOYEES HAVE REFUSED TO WORK OVERTIME IN ACCORDANCE WITH THEIR PAST PRACTICE AND NO OVERTIME HAS BEEN WORKED SINCE THAT DATE.

ARTICLES 5, 6 AND 7 OF THE COLLECTIVE AGREEMENT READ IN PART AS FOLLOWS:

5.01 THE UNION AGREES THAT IT IS THE EXCLUSIVE FUNCTION OF EACH EMPLOYER:

(A) TO CONDUCT ITS BUSINESS IN ALL RESPECTS IN ACCORDANCE WITH ITS COMMITMENTS AND RESPONSIBILITIES, INCLUDING THE RIGHT TO GENERALLY MANAGE THE WORK IN WHICH IT IS ENGAGED; LOCATE, EXTEND, CURTAIL OR CEASE OPERATIONS; TO DETERMINE THE KINDS OF MACHINES, TOOLS AND EQUIPMENT TO BE USED; TO DETERMINE THE METHODS OF PROCESSING AND MANUFACTURING AND THE SCHEDULES OF PRODUCTION; AND TO MAINTAIN ORDER, DISCIPLINE AND EFFICIENCY.

6.01 DURING THE LIFETIME OF THIS AGREEMENT, THE UNION AGREES THAT THERE WILL BE NO STRIKE, STOPPAGE, SLOWDOWN OR PICKETING, OR ANY OTHER ACT WHICH WILL INTERFERE WITH THE REGULAR SCHEDULE OF WORK, AND THE EMPLOYER AGREES THAT THERE WILL BE NO LOCKOUT.



7.01 A REGULAR WORK WEEK SHALL NOT EXCEED FORTY HOURS - MONDAY TO FRIDAY INCLUSIVE, 8 A.M. TO 5 P.M.

7.02 ALL WORK DONE DURING PERIODS OTHER THAN HEREINBEFORE PROVIDED SHALL BE OVERTIME WORK AND SHALL BE PAID FOR, WHETHER TIMEWORK OR PIECE-WORK, AT THE RATE OF TIME-AND-ONE-HALF TO WEEK WORKERS AND TIME-AND-ONE-HALF OF AVERAGE HOURLY EARNINGS TO PIECE WORKERS. AVERAGE HOURLY RATE TO BE TAKEN ON A 3 MONTHS BASIS WORKED DURING THIS PERIOD.

THE RESPONDENT REQUESTED THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 67 OF THE LABOUR RELATIONS ACT AND REFUSE TO GRANT THE DECLARATION APPLIED FOR AND IN SUPPORT OF ITS REQUEST, REFERRED THE BOARD TO NATIONAL SHOWCASE COMPANY LIMITED CASE, VOL.2, C.C.H. CANADIAN LABOUR LAW REPORTER 1960-64 ¶16, 185.

THE NATIONAL SHOWCASE COMPANY LIMITED CASE WAS A COMPLAINT UNDER SECTION 57 (NOW SECTION 65) OF THE LABOUR RELATIONS ACT WHEREIN IT WAS ALLEGED THAT THE AGGRIEVED PERSON WAS DISMISSED CONTRARY TO THE LABOUR RELATIONS ACT AND A REQUEST WAS MADE FOR REINSTATEMENT IN EMPLOYMENT AND COMPENSATION FOR LOSS OF WAGES. THE BOARD IN THAT CASE DISMISSED THE COMPLAINT ON THE GROUNDS THAT THE DISPUTE BETWEEN THE PARTIES SHOULD BE PROCESSED PURSUANT TO THE ARBITRATION PROCEDURES OF THE COLLECTIVE AGREEMENT COVERING THE AGGRIEVED PERSON. IN ARRIVING AT ITS DECISION, THE BOARD DETERMINED THAT WHERE TWO PROCEDURES (ONE UNDER THE LABOUR RELATIONS ACT, THE OTHER UNDER A COLLECTIVE AGREEMENT) WERE AVAILABLE WITH RESPECT TO THE SAME REMEDY (I.E. REINSTATEMENT WITH COMPENSATION FOR LOSS OF WAGES) THE PARTIES SHOULD ABIDE BY THE PROCEDURE WHICH THEY THEMSELVES HAVE PREVIOUSLY AGREED TO AND ACCORDINGLY THE BOARD LEFT THE DISPUTE TO BE SETTLED BY ARBITRATION.

IN THE INSTANT CASE, WHILE IT IS TRUE THERE IS THE ARBITRATION PROCEDURE UNDER THE TERMS OF A COLLECTIVE AGREEMENT, THE REMEDY WHICH THE APPLICANTS SEEK IN THIS CASE. THE REMEDY SOUGHT BY THE APPLICANTS IN THE INSTANT CASE IS ONLY AVAILABLE PURSUANT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THIS REMEDY IS NOT PUNITIVE OR COMPENSATIVE IN NATURE BUT IS DESIGNED PRIMARILY TO EXPEDITIOUSLY INFORM THE PARTIES WITH RESPECT TO THE LAWFULNESS OF A STRIKE ALLEGED TO HAVE BEEN ENGAGED IN BY EMPLOYEES. WE ARE OF OPINION THAT WHERE TWO REMEDIES ARE AVAILABLE, AS IN THIS CASE, SUCH REMEDIES MAY BE REQUESTED AND PROCESSED CONCURRENTLY AS SUGGESTED BY THE BOARD IN THE HARDING CARPETS LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59 ¶16,031.

WE FURTHER FIND THAT THE FACTS OF THE INSTANT CASE ARE SUBSTANTIALLY THE SAME AS THE FACTS IN THE HARDING CARPETS LIMITED CASE AND FOR THE REASONS GIVEN IN THAT CASE, WE FIND THAT THE REFUSAL OF THE EMPLOYEES OF THE APPLICANTS TO WORK OVERTIME IN THE CIRCUMSTANCES HEREIN CONSTITUTE A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE ACT IN THAT IT WAS A REFUSAL TO WORK OR TO CONTINUE TO WORK BY THE EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING AND THAT THIS STRIKE IN THESE CIRCUMSTANCES IS UNLAWFUL.

WE FURTHER FIND THAT THE UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANTS WAS CALLED OR AUTHORIZED BY THE RESPONDENT.

PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT, UNITED GARMENT WORKERS OF AMERICA, LOCAL 253, DID ON AND AFTER JUNE 11TH, 1964 CALL OR AUTHORIZE AN UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANTS AT TORONTO, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. FOR THE REASONS GIVEN BY G. RUSSELL HARVEY IN HIS DISSENT IN THE HARDING CARPETS LIMITED CASE. I WOULD HAVE DISMISSED THIS APPLICATION..."

INDEXED ENDROSEMENT - PROSECUTION.

8276-64-U: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) V. THE HAMILTON COTTON COMPANY LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT TRADE UNION APPLIED ON APRIL 10TH, 1964 FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT AND HAS ALLEGED THAT THE RESPONDENT HAS CONTRAVENED SECTION 59(1) OF THE LABOUR RELATIONS ACT IN THAT, FOLLOWING SERVICE OF NOTICE TO BARGAIN FOR A COLLECTIVE AGREEMENT, WHILE NO COLLECTIVE AGREEMENT WAS IN OPERATION AND PRIOR TO CONCILIATION SERVICES BEING GRANTED, THE RESPONDENT ALTERED THE RIGHTS AND PRIVILEGES OF THE APPLICANT TRADE UNION WITHOUT ITS CONSENT.

THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE FACTS OF THIS CASE, AND THE FACTS MAY BE SUMMARIZED AS FOLLOWS:

THE APPLICANT AND MONARCH KNITTING COMPANY LIMITED (SPINNING DIVISION) (HEREAFTER REFERRED TO AS MONARCH) WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH BY ITS TERMS WAS TO CONTINUE IN EFFECT UNTIL APRIL 1ST, 1964 COVERING ALL EMPLOYEES OF MONARCH AT AJAX.

ON MARCH 4TH, 1964, AT A MEETING BETWEEN THE APPLICANT AND THE RESPONDENT, THE HAMILTON COTTON COMPANY LIMITED, THE APPLICANT WAS ADVISED OF AN IMPENDING PURCHASE OF THE AJAX OPERATIONS OF

MONARCH BY THE RESPONDENT. AMONG OTHER THINGS, THE RESPONDENT AGREED TO RECOGNIZE THE APPLICANT AS BARGAINING AGENT FOR THE EMPLOYEES CURRENTLY EMPLOYED BY MONARCH, AND AGREED TO ENTER INTO NEGOTIATIONS WITH THE APPLICANT FOR A NEW COLLECTIVE AGREEMENT FOLLOWING THE TAKE-OVER. IT WAS FURTHER AGREED THAT THE NORMAL CONCILIATION SERVICE PROCEDURE WOULD BE AVAILABLE IF REQUIRED. THESE EVENTS WERE SUMMARIZED AND CONFIRMED IN A LETTER FROM THE RESPONDENT DATED MARCH 6TH, 1964.

THE LETTER FROM THE RESPONDENT DATED MARCH 6TH, 1964 READS IN PART AS FOLLOWS:

"YOU RAISED WITH US THE POSSIBILITY OF HAMILTON COTTONS AGREEING TO THE PRESENT MONARCH KNITTING AGREEMENT OR, ALTERNATIVELY, ENTERING AN INTERIM AGREEMENT DURING THE PERIOD OF NEGOTIATIONS. FOR THE REASONS WHICH WE MENTIONED DURING OUR DISCUSSION AND BECAUSE OF THE PROBLEMS THAT THIS WILL RAISE FOR BOTH THE UNION AND THE COMPANY, THE POLICY OF HAMILTON COTTONS IS TO NEGOTIATE A SEPARATE NEW AGREEMENT FOR THIS DIVISION OF THE COMPANY. SIMILARLY WITH RESPECT TO THE CHECK-OFF OF UNION DUES, THIS WILL BE A MATTER FOR NEGOTIATIONS AS PART OF THE NEW AGREEMENT."

SUBSEQUENTLY, A NOTICE WAS POSTED INFORMING THE EMPLOYEES OF THE IMPENDING SALE TO THE RESPONDENT. THE RESPONDENT WROTE A LETTER DATED MARCH 20TH, 1964 TO EACH OF THE EMPLOYEES OFFERING THEM EMPLOYMENT COMMENCING MARCH 30TH, 1964. THIS LETTER SET OUT CERTAIN TERMS AND CONDITIONS OF EMPLOYMENT AND THE EMPLOYEES WERE REQUESTED TO COMPLETE AN ATTACHED APPLICATION FOR EMPLOYMENT FORM AND RETURN THE SAME TO THE RESPONDENT NOT LATER THAN MARCH 25TH, 1964.

ON MARCH 26TH, 1964, THE APPLICANT WROTE A LETTER TO THE RESPONDENT WHICH WAS MAILED REGISTERED MAIL AND WAS RECEIVED BY THE RESPONDENT APPROXIMATELY 9 A.M. MONDAY, MARCH 30TH, 1964. THIS LETTER READS IN PART AS FOLLOWS:

"YOU HAVE INDICATED TO US THAT YOUR COMPANY IS TAKING OVER THE OPERATION OF THE SPINNING DIVISION OF THE MONARCH KNITTING COMPANY LIMITED AND THE EMPLOYEES OF THIS COMPANY AT AJAX HAVE BEEN NOTIFIED THAT THEY WILL, EFFECTIVE MARCH 30TH, 1964, BE ENGAGED AS EMPLOYEES OF YOUR COMPANY.

PLEASE ACCEPT THIS LETTER AS NOTICE BY THE TEXTILE WORKERS UNION OF AMERICA, LOCAL 1278, THAT THE UNION DESIRES TO MEET AND BARGAIN WITH YOUR COMPANY WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. THIS NOTICE IS GIVEN TO YOU PURSUANT TO SECTION 47(A) AND SECTION 11 OF THE LABOUR RELATIONS ACT.

IN LIGHT OF THIS NOTICE AND OF THE PROVISIONS OF SECTION 59(1) OF THE LABOUR RELATIONS ACT, WE ARE ASSUMING THAT NO ALTERATION OF ANY OF THE TERMS OR CONDITIONS OF EMPLOYMENT, OR ANY OF THE RIGHTS, PRIVILEGES



OR DUTIES OF THE UNION OR OF ANY OF THE EMPLOYEES, WILL BE MADE UNTIL A COLLECTIVE AGREEMENT HAS BEEN SIGNED OR THE PROCEDURES INDICATED IN SECTION 59(1) HAVE BEEN COMPLETED.

WE ARE ENCLOSING HERewith A COPY OF THE AGREEMENT IN EFFECT BETWEEN THE MONARCH KNITTING COMPANY LIMITED AND THE UNION, WHICH AGREEMENT SET OUT THE RATES OF WAGES, TERMS AND CONDITIONS OF EMPLOYMENT, ETC. REFERRED TO ABOVE."

THE RESPONDENT TOOK OVER THE AJAX OPERATIONS ON MONDAY, MARCH 30TH, 1964 AT 7.30 A.M. ON MARCH 30TH, 1964, IN REPLY TO THE APPLICANT'S LETTER OF MARCH 26TH, 1964, THE RESPONDENT WROTE A LETTER TO THE APPLICANT WHICH READS IN PART AS FOLLOWS:

"WE ARE IN RECEIPT TO-DAY OF YOUR LETTER OF MARCH 26TH. AS INDICATED TO YOU BY LETTER OF MARCH 6TH, WE ARE WILLING TO RECOGNIZE THE UNION AS THE BARGAINING AGENT OF THE ELIGIBLE EMPLOYEES OF OUR AJAX DIVISION, AND WOULD SUGGEST A MEETING TAKE PLACE EITHER THE 7TH OR 10TH OF APRIL IN AJAX, AT 10:00 A.M. WOULD YOU PLEASE ADVISE AS TO WHICH DATE IS ACCEPTABLE.

IN THE MEANTIME, WE DO NOT AGREE THAT THE FORM OF AGREEMENT ENCLOSED IN YOUR LETTER IS IN ANY RESPECT BINDING UPON THE HAMILTON COTTON COMPANY LIMITED, NOR DOES IT ESTABLISH TERMS OR CONDITIONS OF EMPLOYMENT FOR THE AJAX DIVISION EMPLOYEES."

THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND MONARCH CONTAINS THE FOLLOWING PROVISION:

"THE COMPANY AGREES THAT IT WILL DEDUCT FROM THE EARNINGS OF PERMANENT EMPLOYEES WHO HAVE COMPLETED THEIR PROBATIONARY PERIOD MONTHLY UNION DUES UPON RECEIPT OF WRITTEN AUTHORIZATION FROM THE EMPLOYEES CONCERNED, AND WILL REMIT THE MONEY SO DEDUCTED TO THE UNION."

WHILE MONARCH WAS AUTHORIZED TO DEDUCT UNION DUES, NO WRITTEN AUTHORIZATION TO DEDUCT DUES WAS EVER GIVEN TO THE RESPONDENT.

THE UNION DUES WHICH WERE DEDUCTED PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT WITH MONARCH WERE REGULARLY DEDUCTED BY MONARCH FROM THE 4TH DAY OF EVERY MONTH AND THE DUES FOR THE MONTH OF MARCH 1964 WERE IN FACT FORWARDED BY MONARCH TO THE APPLICANT ON OR ABOUT APRIL 7TH, 1964.

THE PARTIES AGREE THAT THE TIME OF THE RECEIPT BY THE COMPANY OF THE NOTICE TO BARGAIN, ON MARCH 30TH, 1964, AT 9:00 A.M. WAS THE EFFECTIVE TIME OF THE NOTICE AND THE TERMS AND CONDITIONS OF EMPLOYMENT AND THE RIGHTS, PRIVILEGES AND DUTIES OF THE APPLICANT WITH WHICH WE ARE HERE CONCERNED ARE THOSE THAT WERE IN EFFECT AT THAT TIME.

WHILE THE DEDUCTION OF UNION DUES MAY BE A WORKING CONDITION, WHERE THE RIGHT TO HAVE UNION DUES DEDUCTED EXISTS IT ALSO MAY BE CONSTRUED AS A RIGHT OR PRIVILEGE OF A TRADE UNION. SINCE THE



APPLICANT IN THIS CASE DID NOT ALLEGE OR ARGUE THAT THERE HAD BEEN ANY CHANGE IN WAGES OR WORKING CONDITIONS, THE BOARD IS TREATING THE EVENTS AS AN ALLEGED ALTERATION OF THE RIGHTS AND PRIVILEGES OF THE APPLICANT TRADE UNION. THE BOARD IS NOT CONSIDERING THESE EVENTS AS AN ALLEGED ALTERATION OF WAGES OR WORKING CONDITIONS OF THE EMPLOYEES SINCE IT WAS NOT CALLED UPON TO DETERMINE WHAT THE SITUATION WOULD BE WHERE A SUCCESSOR EMPLOYER CHANGES WAGES AND CONDITIONS AFTER NOTICE TO BARGAIN PURSUANT TO SECTION 47A. THE REASONS IN THIS CASE ARE RESTRICTED TO THE SITUATION WHERE IT IS ALLEGED THAT THE RIGHTS AND PRIVILEGES OF A TRADE UNION HAVE BEEN ALTERED IN A SITUATION WHERE A TRADE UNION CONTINUES TO BE THE BARGAINING AGENT IN A LIKE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 47A.

THE POSITION OF THE APPLICANT WAS THAT IN AS MUCH AS THE RESPONDENT'S LETTER OF MARCH 30TH, 1964 WAS WRITTEN AFTER THE NOTICE TO BARGAIN (SET OUT IN THE APPLICANT'S LETTER OF MARCH 26TH) WAS RECEIVED, THE RESPONDENT'S LETTER (WHEREIN THE RESPONDENT TOOK THE POSITION THAT THE PREVIOUS COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND MONARCH WAS NOT IN ANY RESPECT BINDING UPON THE RESPONDENT AND DID NOT ESTABLISH THE TERMS OR CONDITIONS OF EMPLOYMENT FOR THE AJAX EMPLOYEES) ALTERED THE RIGHTS AND PRIVILEGES OF THE APPLICANT TRADE UNION CONTRARY TO SECTION 59(1). MORE PARTICULARLY THE APPLICANT ARGUED THAT SINCE THE RESPONDENT HAD TAKEN THE POSITION THAT IT WOULD NOT CONTINUE TO CHECK OFF UNION DUES, BUT (AS SET OUT IN ITS LETTER DATED MARCH 6TH, 1964), WOULD RESERVE THE MATTER AS PART OF THE NEGOTIATION FOR A NEW COLLECTIVE AGREEMENT, THE RESPONDENT FURTHER ALTERED THE RIGHTS AND PRIVILEGES OF THE APPLICANT TRADE UNION.

THE RESPONDENT ON ITS PART SUBMITTED THAT THE NOTICE TO BARGAIN WHICH WAS RECEIVED AT 9 A.M. ON MARCH 30TH, 1964 WAS RECEIVED BY THE RESPONDENT AFTER IT TOOK OVER THE OPERATIONS AT AJAX AND AFTER IT HAD IMPOSED THE CHANGES WHICH IT HAD PREVIOUSLY SET FORTH IN ITS LETTER DATED MARCH 6TH, 1964. THE RESPONDENT'S LETTER OF MARCH 30TH, 1964, DID NOT ESTABLISH ANY NEW CHANGES BUT MERELY REITERATED THE RESPONDENT'S POSITION AS SET FORTH IN ITS EARLIER LETTER.

SECTION 59(1) UPON WHICH THE APPLICANT RELIES, READS IN PART AS FOLLOWS:

59.-(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11.  
...AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO  
EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE  
UNION, ALTER....ANY RIGHT, PRIVILEGE OR DUTY, OF THE  
.....TRADE UNION.....

THIS APPLICATION HAS RAISED THE ISSUE OF WHAT RIGHTS AND PRIVILEGES A TRADE UNION HAS UNDER SECTION 47A OF THE ACT. DOES A TRADE UNION WHICH WAS A PARTY TO A COLLECTIVE AGREEMENT WITH A COMPANY THAT SELLS ITS BUSINESS TO A SUCCESSOR COMPANY RETAIN ALL THE RIGHTS AND PRIVILEGES AND DUTIES THAT IT HAD UNDER THE COLLECTIVE AGREEMENT WITH THE PREDECESSOR COMPANY, AS SUGGESTED BY THE APPLICANT IN THIS CASE; OR, DOES SECTION 47A CONFER ON THE TRADE UNION ONLY THE RIGHTS AND PRIVILEGES TO CONTINUE TO REPRESENT THE EMPLOYEES AS BARGAINING AGENT IN THE LIKE BARGAINING UNIT AND

TO GIVE A WRITTEN NOTICE TO BARGAIN FOR A COLLECTIVE AGREEMENT TO THE SUCCESSOR COMPANY AS SUGGESTED BY THE RESPONDENT.

SECTION 47A(2) READS IN PART AS FOLLOWS:

"WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION.....SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11."

THE ONLY RIGHT OR PRIVILEGE WHICH A TRADE UNION RETAINS PURSUANT TO SECTION 47A FOLLOWING THE SALE OF A BUSINESS, IS THE RIGHT OR PRIVILEGE TO CONTINUE AS BARGAINING AGENT FOR THE EMPLOYEES IN THE LIKE BARGAINING UNIT, AND TO GIVE THE NEW EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11. SECTION 11 READS AS FOLLOWS:

"FOLLOWING CERTIFICATION, THE TRADE UNION SHALL GIVE THE EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT."

A TRADE UNION THAT HAS BEEN CERTIFIED AND HAS SERVED NOTICE TO BARGAIN UNDER SECTION 11 DOES NOT HAVE THE RIGHT TO CHECK-OFF PRIVILEGES BY VIRTUE OF THE NOTICE TO BARGAIN. IT DOES HAVE THE RIGHT TO BARGAIN THAT CHECK-OFF PRIVILEGES BE INCLUDED AS A TERM OF A COLLECTIVE AGREEMENT.

THERE IS NO EVIDENCE BEFORE THE BOARD WHICH WOULD ENTITLE THE BOARD TO FIND THAT ANY OF THE RIGHTS OF THE APPLICANT TRADE UNION HAVE BEEN VIOLATED BY THE RESPONDENT IN THIS CASE.

IT IS OF INTEREST TO NOTE THAT A TRADE UNION WHICH DISPLACES ANOTHER TRADE UNION AS BARGAINING AGENT FOLLOWING A REPRESENTATION VOTE DOES NOT INHERIT THE RIGHTS, PRIVILEGES AND DUTIES WHICH THE DISPLACED TRADE UNION HAD OBTAINED THROUGH COLLECTIVE BARGAINING.

IT IS ALSO OF INTEREST TO NOTE THAT WHILE SECTION 47(3) SPECIFICALLY PROVIDES THAT WHERE ONE TRADE UNION SUCCEEDS ANOTHER TRADE UNION, THE SUCCESSOR TRADE UNION ACQUIRES THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR TRADE UNION UNDER THE COLLECTIVE AGREEMENT, SECTION 47A MAKES NO SPECIFIC REFERENCE TO THE CONTINUATION OF RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR TRADE UNION UNDER A COLLECTIVE AGREEMENT.

THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND SPECIFICALLY FINDS THAT SECTION 59(1) OF THE ACT HAS NOT BEEN CONTRAVENED BY THE RESPONDENT.

THIS APPLICATION IS THEREFORE DISMISSED."

SPECIAL ENDORSEMENT IN CONCILIATION APPLICATION.

8610-64-C: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT). (REFERRED JULY, 1964).

ON JUNE 12, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

" THIS IS AN APPLICATION FOR CONCILIATION SERVICES. THE APPLICANT WAS CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF, ON APRIL 16TH, 1964. THE APPLICATION WAS NOT PROCESSED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE APPLICANT HAVING ELECTED TO PROCEED UNDER SECTION 5.

THE PRESENT APPLICATION FOR CONCILIATION WAS FILED ON FORM 65, APPLICATION FOR CONCILIATION SERVICES, CONSTRUCTION INDUSTRY. THE RESPONDENT CONTENDS THAT THE APPLICANT HAVING ELECTED TO PROCEED UNDER SECTION 5, AND NOT SECTION 92, IN THE CERTIFICATION PROCEEDINGS, THE LEGISLATION DOES NOT PERMIT AN APPLICATION FOR CONCILIATION SERVICES TO BE MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS.

WHILE WE DO NOT AGREE WITH THIS INTERPRETATION OF THE LEGISLATION IN QUESTION, WE HAVE COME TO THE CONCLUSION THAT WHERE AN APPLICANT HAS AN ELECTION, AS IN THE PRESENT CASE, AS A MATTER OF POLICY IT OUGHT NOT TO BE PERMITTED TO CHANGE HORSES IN MID-STREAM IN THE ABSENCE OF SOME COMPELLING CIRCUMSTANCES SUCH AS A CHANGE IN THE EMPLOYMENT STATUS OF THE EMPLOYEES. ONE OF OUR PRIME CONSIDERATIONS IN REACHING THIS CONCLUSION IS THAT THE CONCILIATION PROCESS IS NOT THE APPROPRIATE PROCESS IN WHICH TO CONSIDER A QUESTION AS TO WHETHER THE EMPLOYER IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY. IN THE PRESENT CASE IT IS CLEAR THAT THIS PROBLEM WOULD ARISE BY REASON OF THE EMPLOYMENT OF BARGAINING UNIT EMPLOYEES ON BOTH "INSIDE" AND "OUTSIDE" WORK. OF COURSE, IT MAY NOT ALWAYS BE POSSIBLE TO AVOID SUCH A DETERMINATION IN A CONCILIATION CASE, BUT WHERE IT WOULD HAVE BEEN POSSIBLE IN A CERTIFICATION PROCEEDING TO SETTLE SUCH A QUESTION THEN, IN OUR OPINION, THAT IS WHERE THE MATTER SHOULD BE CANVASSED.

WE HASTEN TO ADD THAT OUR DECISION IN THIS CASE IS LIMITED TO THE FACTS AND WOULD HAVE NO APPLICATION IN THE CASE OF CERTIFICATION PRIOR TO THE COMING INTO FORCE OF THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT OR IN THE CASE OF VOLUNTARY RECOGNITION.

ALTHOUGH THE APPLICATION WAS MADE ON FORM 65 AND NOT ON FORM 14, APPLICATION FOR CONCILIATION SERVICES, WE CAN SEE NO REASON FOR NOT DEALING WITH THE APPLICATION AS THOUGH IT HAD BEEN MADE ON FORM 14. THERE HAS BEEN A HEARING IN THIS MATTER AND THE RESPONDENT IN OUR VIEW IS NOT PREJUDICED IN ANY WAY.

ACCORDINGLY, THE BOARD:

- (1) FINDS THAT THIS IS NOT AN APPLICATION FALLING WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT;
- (2) DIRECTS THAT THE PARTIES MEET, BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AND REPORT THEIR PROGRESS TO THE BOARD ON OR BEFORE THE 24TH DAY OF JUNE, 1964."

ON JULY 17, 1964, THE APPLICATION WAS REFERRED TO THE MINISTER.

#### ERRATUM

IN THE JUNE 1963 MONTHLY REPORT OF THE ONTARIO LABOUR RELATIONS BOARD (PAGE 132) THE BOARD'S DECISION IN THE ALVIN TILE COMPANY LIMITED CASE (FILE NUMBER 6050-63-R) WAS REPORTED. THE ENTRY SHOULD HAVE READ:-

6050-63-R: THE BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL NO. 12 KITCHENER ONTARIO (APPLICANT) V. ALVIN TILE COMPANY LIMITED (RESPONDENT) V. LOCAL 421, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL TILE AND TERRAZZO MECHANICS, MARBLE MASONS, RESILIENT FLOOR LAYERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT OR OUT OF KITCHENER, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."

NUMBER OF NAMES ON REVISED	
VOTERS' LIST	25
NUMBER OF BALLOTS CAST	25
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	2



STATISTICAL TABLES FOR JULY 1964

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JULY 1964	1ST 4 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	59	284	254
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	30	30
III. DECLARATION OF SUCCESSOR STATUS	-	1	4
IV. CONCILIATION SERVICES	90	433	482
V. DECLARATION THAT STRIKE UNLAWFUL	4	16	22
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	2	3	-
VII. CONSENT TO PROSECUTE	15	32	80
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	38	51
IX. MISCELLANEOUS	2	6	4
TOTAL	<u>190</u>	<u>843</u>	<u>927</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JULY 1964	1ST 4 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	77	378	368

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		JULY	1ST 4 MONTHS OF FISCAL YEAR	
		1964	1964-65	1963-64
I.	CERTIFICATION	62	280	285
II.	DECLARATION TERMINATING BARGAINING RIGHTS	2	34	41
III.	DECLARATION OF SUCCESSOR STATUS	-	4	3
IV.	CONCILIATION SERVICES	114	495	496
V.	DECLARATION THAT STRIKE UNLAWFUL	3	14	22
VI.	DECLARATION THAT LOCK- OUT UNLAWFUL	1	2	-
VII.	CONSENT TO PROSECUTE	6	20	69
VIII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	48	52
IX.	MISCELLANEOUS	2	7	2
TOTAL		<u>198</u>	<u>904</u>	<u>970</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JULY 1964	1ST 4 MONTHS 1964-65	FISCAL YEAR 1963-64	JULY 1964	1ST 4 MONTHS 1964-65	FISCAL YEAR 1963-64
I. <u>CERTIFICATION</u>						
GRANTED	42	197	203	1309	7321	6402
DISMISSED	14	55	51	407	3663	1495
WITHDRAWN	6	28	31	215	1175	367
TOTAL	<u>62</u>	<u>280</u>	<u>285</u>	<u>1,931</u>	<u>12,159</u>	<u>8,264</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	1	20	37	38	246	756
DISMISSED	1	12	12	10	269	404
WITHDRAWN	-	2	1	-	82	9
TOTAL	<u>2</u>	<u>34</u>	<u>50</u>	<u>48</u>	<u>597</u>	<u>1,169</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS	
	JULY 1964	1ST 4 MONTHS FISCAL YEAR 1964-65	1963-64
<u>III. CONCILIATION SERVICES*</u>			
REFERRED	111	458	473
DISMISSED	-	20	10
WITHDRAWN	3	17	13
TOTAL	114	495	496
<u>IV. DECLARATION THAT STRIKE UNLAWFUL</u>			
GRANTED	2	8	2
DISMISSED	1	3	3
WITHDRAWN	-	3	17
TOTAL	3	14	22
<u>V. DECLARATION THAT LOCKOUT UNLAWFUL</u>			
GRANTED	-	-	-
DISMISSED	1	1	-
WITHDRAWN	-	1	-
TOTAL	1	2	-
<u>VI. CONSENT TO PROSECUTE</u>			
GRANTED	-	2	19
DISMISSED	1	3	3
WITHDRAWN	5	15	47
TOTAL	6	20	69

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.



TABLE V  
REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JULY 1964	1ST 4 MONTHS FISCAL YEAR 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	9	8
POST-HEARING VOTE	1	8	25
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	4	6
POST-HEARING VOTE	5	23	25
BALLOTS NOT COUNTED	-	-	1
TOTAL	<u>9</u>	<u>44</u>	<u>65</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI  
REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JULY 1964	1ST 4 MONTHS OF FISCAL YEAR 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	-	6	16
TOTAL	<u>-</u>	<u>6</u>	<u>21</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

AUGUST, 1964



ONTARIO

# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD



## P R A C T I C E   N O T E S

IT IS THE INTENTION OF THE BOARD TO ISSUE FROM  
TIME TO TIME PRACTICE NOTES ON VARIOUS MATTERS.  
THESE PRACTICE NOTES ARE FOR THE GENERAL GUIDANCE  
AND INFORMATION OF PERSONS WHO MAY HAVE RESORT TO  
THE BOARD. THEY SET OUT THE GENERAL PROCEDURES  
THAT THE BOARD HAS EVOLVED ON THE MATTER WITH WHICH  
THE PRACTICE NOTE DEALS UP TO THE TIME IT IS ISSUED.



PRACTICE NOTE #9

APPLICATION FOR CERTIFICATION

PRE-HEARING REPRESENTATION VOTES  
DATE FOR DETERMINING ELIGIBILITY OF VOTERS

WHERE A TRADE UNION, IN APPLYING FOR CERTIFICATION, REQUESTS A PRE-HEARING REPRESENTATION VOTE AND THE BOARD DIRECTS THAT SUCH A VOTE BE TAKEN, IT HAS BEEN THE PRACTICE OF THE BOARD, EXCEPT IN SPECIAL CIRCUMSTANCES, TO DIRECT THAT THE EMPLOYEES IN THE VOTING CONSTITUENCY WHO ARE ELIGIBLE TO VOTE ARE THOSE IN THE EMPLOY OF THE EMPLOYER ON THE TERMINAL DATE FIXED FOR THE APPLICATION IN ACCORDANCE WITH SECTION 2 OF THE BOARD'S RULES OF PROCEDURE.

IF ANY PARTY WISHES TO HAVE ELIGIBILITY DETERMINED AS OF SOME DATE OTHER THAN THE TERMINAL DATE FOR THE APPLICATION, REPRESENTATIONS AS TO THE REASON THEREFOR SHOULD BE MADE TO THE EXAMINER APPOINTED TO CONFER WITH THE PARTIES AT THE TIME OF THE EXAMINER'S MEETING.





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1964

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

8395-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (APPLICANT) V. SANDY'S DEPT. STORE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT STORE MANAGER, BOOKKEEPER, PERSONS ABOVE THE RANKS OF STORE MANAGER, BOOKKEEPER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (41 EMPLOYEES IN THE UNIT).

8531-64-R: INTERNATIONAL UNION OF MINE MILL & SMELTER WORKERS (CANADA) (APPLICANT) V. SILVER TOWN MINES, LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COBALT, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS OR FOREMAN, OFFICE STAFF AND EMPLOYEES IN THE ENGINEERING AND GEOLOGICAL DEPARTMENTS." (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 232 ).

8595-64-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (APPLICANT) V. THE LUFKIN RULE CO. OF CANADA, LTD. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (107 EMPLOYEES IN THE UNIT).

ON AUGUST 13, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MAY 27TH, 1964. ON THE TERMINAL DATE OF THIS APPLICATION, JUNE 3RD, 1964, THE INTERVENER ALSO APPLIED TO BE CERTIFIED FOR THE SAME UNIT OF EMPLOYEES.

THIS APPLICATION CAME ON FOR HEARING ON JUNE 10TH, 1964 AND AT THE HEARING THE APPLICANT WITHDREW ITS APPLICATION.

ON JULY 20TH, 1964, THE BOARD DIRECTED THE REGISTRAR TO FIX A NEW TERMINAL DATE FOR THE INTERVENER'S APPLICATION AND THE REGISTRAR ACCORDINGLY FIXED JULY 27TH, 1964 AS THE NEW TERMINAL DATE.

AT THE HEARING ON JULY 10TH, THE BOARD ANNOUNCED THAT THE RESPONDENT HAD FILED A LIST OF EMPLOYEES AS OF MAY 27TH, 1964 CONTAINING THE NAMES OF 101 EMPLOYEES IN THE BARGAINING UNIT. THE BOARD ALSO ANNOUNCED THAT THE INTERVENER HAD FILED 61 MEMBERSHIP DOCUMENTS. THE BOARD ALSO INFORMED THE PARTIES THAT A DOCUMENT WAS FILED IN OPPOSITION TO THE INTERVENER'S APPLICATION WHICH CONTAINED THE NAMES OF 4 EMPLOYEES, 2 OF WHOM WERE CLAIMED BY THE

INTERVENER AS MEMBERS.

PRIOR TO THE NEW TERMINAL DATE FIXED BY THE REGISTRAR IN ACCORDANCE WITH THE BOARD'S DIRECTION, THE RESPONDENT FILED A REPLY AND ALTHOUGH IT WAS NOT DIRECTED TO DO SO, IT ALSO FILED A NEW LIST CONTAINING THE NAMES OF 107 EMPLOYEES AS CONSTITUTING THE LIST OF EMPLOYEES IN THE BARGAINING UNIT ON JULY 27TH, 1964, THE NEW TERMINAL DATE. THE RESPONDENT SUBMITTED THAT THE INTERVENER'S MEMBERSHIP POSITION BE DETERMINED HAVING REGARD TO THE NEW LIST OF EMPLOYEES.

THE INTERVENER SUBMITTED AN ADDITIONAL 18 MEMBERSHIP DOCUMENTS PRIOR TO THE NEW TERMINAL DATE, MAKING A TOTAL OF 79 MEMBERSHIP DOCUMENTS FILED BY THE INTERVENER.

A GROUP OF 12 EMPLOYEES OF THE RESPONDENT FILED A DOCUMENT PRIOR TO THE NEW TERMINAL DATE IN OPPOSITION TO THE INTERVENER'S APPLICATION. OF THE 12 EMPLOYEES WHOSE SIGNATURES APPEARED ON THIS DOCUMENT, THE INTERVENER CLAIMED 3 AS MEMBERS. THE NAME OF ONE OF THE INTERVENER'S MEMBERS APPEARED ON BOTH DOCUMENTS WHICH WERE FILED IN OPPOSITION TO THE INTERVENER'S APPLICATION. THUS A TOTAL OF 15 PERSONS INDICATED IN WRITING THAT THEY OPPOSED THE APPLICATION OF THE INTERVENER AND FOUR WERE CLAIMED AS MEMBERS BY THE INTERVENER.

IN SO FAR AS THE ORIGINAL LIST FILED BY THE RESPONDENT, CONTAINING A TOTAL OF 101 NAMES IS CONCERNED, THE INTERVENER HAS FILED 79 MEMBERSHIP DOCUMENTS OF WHICH 62 CORRESPOND WITH NAMES ON THAT LIST. THE DOCUMENTS FILED IN OPPOSITION TO THE INTERVENER'S APPLICATION CONTAINED THE NAMES OF A TOTAL OF 3 PERSONS WHO ARE CLAIMED BY THE INTERVENER AS MEMBERS. THERE THEREFORE REMAINS 59 EMPLOYEES ON THE ORIGINAL LIST FILED BY THE RESPONDENT WHOSE MEMBERSHIP IN THE INTERVENER IS UNCHALLENGED. THE INTERVENER'S UNCONTESTED MEMBERSHIP POSITION WITH RESPECT TO THE EMPLOYEES WHOSE NAMES APPEARED ON THE ORIGINAL LIST FILED BY THE RESPONDENT IS THEREFORE IN EXCESS OF FIFTY-FIVE PER CENT.

IN SO FAR AS THE SECOND LIST FILED BY THE RESPONDENT, CONTAINING A TOTAL OF 107 NAMES IS CONCERNED (WHICH THE RESPONDENT SUBMITS SHOULD BE CONSIDERED) THE INTERVENER HAS FILED 79 MEMBERSHIP DOCUMENTS OF WHICH 68 CORRESPOND WITH NAMES APPEARING ON THAT LIST. THE DOCUMENTS WHICH WERE FILED IN OPPOSITION TO THE INTERVENER'S APPLICATION CONTAINED THE NAMES OF 4 PERSONS WHO ARE CLAIMED BY THE INTERVENER AS MEMBERS. THERE THEREFORE REMAINS 64 NAMES OF EMPLOYEES ON THE SECOND LIST WHOSE MEMBERSHIP POSITION IN THE INTERVENER IS UNCHALLENGED. AGAIN IF THIS SECOND LIST IS TO BE CONSIDERED, THE INTERVENER'S UNCONTESTED MEMBERSHIP POSITION WITH RESPECT TO THE EMPLOYEES WHOSE NAMES APPEAR ON THE SECOND LIST FILED BY THE RESPONDENT IS IN EXCESS OF FIFTY-FIVE PER CENT.

ANY FURTHER REPRESENTATIONS THAT ANY OF THE PARTIES MAY WISH TO MAKE IN CONNECTION WITH THIS APPLICATION SHALL BE MADE IN WRITING ON OR BEFORE AUGUST 20, 1964. IT IS THE INTENTION OF THE BOARD TO DISPOSE OF THIS APPLICATION IMMEDIATELY FOLLOWING THAT DATE ON THE BASIS OF THE EVIDENCE AND REPRESENTATIONS THEN BEFORE IT WITHOUT FURTHER NOTICE TO THE PARTIES."

ON AUGUST 24TH, 1964 THE BOARD CERTIFIED THE INTERVENER.

8660-64-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT). V. CARLETON UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 869 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT OF BUILDING AND GROUNDS AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (31 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8702-64-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF TRENTON (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, ONE CONFIDENTIAL SECRETARY TO THE CLERK-COMPTROLLER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT  
RODMEN AND INSTRUMENT MEN ARE INCLUDED IN THE BARGAINING  
UNIT."

8744-64-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF GOVERNORS OF THE KINGSTON GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT KINGSTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONNEL ASSISTANTS, ONE SECRETARY TO EACH OF THE FOLLOWING: SUPERINTENDENT, ASSISTANT SUPERINTENDENT, ASSISTANT ADMINISTRATOR FINANCE, ASSISTANT ADMINISTRATOR PLANT, DIRECTOR OF NURSING, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL NO. 22." (137 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT  
PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK,  
IF THE HOSPITAL SHARE OF THEIR SALARY IS FOR LESS THAN 24  
HOURS PER WEEK, AND THE BALANCE OF THEIR SALARY IS PAID  
FROM GRANTS REQUESTS OR OTHER FUNDS DONATED TO THE HOSPITAL,  
ARE EXCLUDED FROM THE BARGAINING UNIT."

FOR PURPOSES OF CLARITY THE BOARD FURTHER DECLARES  
THAT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF,  
UNDERGRADUATE NURSING STAFF, GRADUATE PHARMACISTS, UNDER-  
GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS,  
TECHNICIANS, PHYSIOTHERAPISTS, STAFF THERAPISTS, PSYCHOLOGISTS,  
SOCIAL WORKERS, LIBRARIANS AND CAR PARK ATTENDANTS ARE NOT  
INCLUDED IN THE BARGAINING UNIT."



8798-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
(APPLICANT) V. PIONEER ELECTRIC EASTERN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT J. EDGAR CLASSIFIED BY THE RESPONDENT AS A NIGHT WATCHMAN AND E. SZILAGYI AND D. NYERS CLASSIFIED BY THE RESPONDENT AS TEST MEN ARE INCLUDED IN THE BARGAINING UNIT AND THAT THE CHIEF TEST MAN IS A FOREMAN AND IS EXCLUDED FROM THE BARGAINING UNIT."

8835-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)  
V. DOMTAR PACKAGING LIMITED, BELL-KILGOUR DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

8854-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466  
(APPLICANT) V. O.J. GAFFNEY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 233 )

8892-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CANADIAN WIRE  
BRUSH COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8915-64-R: UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA; LOCAL 30  
(APPLICANT) V. HAR-BER WOOD PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8943-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE SALVATION  
ARMY GRACE HOSPITAL (TORONTO) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (98 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

FOR THE PURPOSE OF CLARITY, THE BOARD FURTHER DECLARES THAT THE BARGAINING UNIT INCLUDES CERTIFIED NURSING ASSISTANTS."

8955-64-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C.L.C. (APPLICANT) V. ROY COOKE CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF FLETCHER BRICK AND TILE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TILBURY EAST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

8964-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NATIONAL HARDWARE SPECIALTIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRESDEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (96 EMPLOYEES IN THE UNIT).

8965-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT V. SARNIA IRON & METAL COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

8967-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL UNION #183 (APPLICANT) V. CANADIAN RADIATOR MFG. COMPANY LTD. (RESPONDENT). (34 EMPLOYEES IN THE UNIT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

8977-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN WINDSOR, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT

BETWEEN THE RESPONDENT AND LOCAL 102 OF THE CANADIAN UNION OF OPERATING ENGINEERS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (192 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CERTIFIED NURSING ASSISTANTS AND MR. EARL DURHAM (ASSISTANT LAUNDRY SUPERVISOR) ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SALVATION ARMY OFFICERS, MR. GERALD BOCCINI (ASSISTANT STORE-KEEPER) AND MRS. ELIZABETH REID (ASSISTANT HOUSEKEEPER) ARE EXCLUDED FROM THE BARGAINING UNIT.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT SWITCHBOARD OPERATORS ARE PART OF THE OFFICE STAFF AND ARE EXCLUDED FROM THE BARGAINING UNIT."

8981-64-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. QUINLAN-CRAWFORD LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT COLLINGWOOD, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT FORELADIES, THOSE PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FORELADY, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

8992-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1071 (INTERVENER) V. INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (INTERVENER) V. BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #20-OSHAWA (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"INTERVENTIONS HAVE BEEN FILED BY THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 597, THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1071 AND THE BRICKLAYERS, MASONS AND PLASTERERS



INTERNATIONAL UNION OF AMERICA, LOCAL #20 OSHAWA. IN SO FAR AS THE INTERVENTIONS BY THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 597 AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1071 ARE CONCERNED, THESE ARE BASED ON BARGAINING RIGHTS UNDER CERTIFICATES GRANTED BY THE BOARD ON FEBRUARY 3, 1964 AND FEBRUARY 6, 1964 RESPECTIVELY. IN ITS ORIGINAL APPLICATION THE APPLICANT IN THE PRESENT CASE SOUGHT AN AREA CONSISTING OF THE COUNTIES OF ONTARIO AND DURHAM. SUCH AN AREA WOULD HAVE CONFLICTED WITH THE AREA GRANTED TO THESE TWO INTERVENERS. HOWEVER, THE AREA GRANTED IN THIS APPLICATION DOES NOT CONFLICT WITH THE AREAS GRANTED IN THE OTHER TWO CASES.

WITH RESPECT TO THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL #20, OSHAWA, ITS CLAIM RESTS ON A COLLECTIVE AGREEMENT ON FILE WITH THE BOARD BETWEEN THAT UNION AND THE OSHAWA AND DISTRICT CONSTRUCTION EXCHANGE. AFTER CAREFULLY EXAMING THIS AGREEMENT THE BOARD IS SATISFIED THAT THE PRESENT RESPONDENT IS NOT A PARTY THERETO.

THE BOARD NOTES THAT NONE OF THE INTERVENERS REQUEST A HEARING.

IN THESE CIRCUMSTANCES A CERTIFICATE WILL ISSUE TO THE APPLICANT."

9016-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. SPRUCE VILLA HOTEL LIMITED (RESPONDENT).

THE BOARD DETERMINED TWO BARGAINING UNITS IN THIS APPLICATION AS FOLLOWS:-

UNIT No.1: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, HEAD CHEF, DINING-ROOM MANAGERESS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

UNIT No.2: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

9020-64-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (APPLICANT) V. JACKSON METAL INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9030-64-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 200, N.C.C.L. (APPLICANT) V. HARBOUR EXPRESS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

9031-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RAHN METALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

9032-64-R: LOCAL UNION 1590 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (APPLICANT) V. MURRAY-JENSEN MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9038-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE FOOD MANAGEMENT DIVISION OF THE RESPONDENT AT THE ONTARIO DEPARTMENT OF LABOUR BUILDING, 8 YORK STREET, TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CHEF AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9039-64-R: GENERAL TRUCK DRIVERS LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. GIBSCO TRANSPORT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

9043-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ADAM'S CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT WINDSOR ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9045-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190 (APPLICANT) V. MARPRO SERVICES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE

TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

9048-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #493 (APPLICANT) V. CARRINGTON CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT SAINT MARIE AND THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9050-64-R: TEAMSTERS' LOCAL UNION No. 230, READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. HARPER TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

9051-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. CUSTOM READY MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

9053-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. VAN DER HOUT ASSOCIATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

9057-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. NORTOWN ELECTRICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (33 EMPLOYEES IN THE UNIT).

9087-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. REINFORCING STEEL PRODUCTS COMPANY, DIVISION OF KELSTEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."  
(96 EMPLOYEES IN THE UNIT).

9088-64-R INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)  
V. T. C. E. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE TOWNSHIP OF ETOBICOKE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9092-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. OMEGA ELECTRIC (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

9096-64-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION (APPLICANT) V. TRANBY PROCESSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY AND OFFICE STAFF."  
(42 EMPLOYEES IN THE UNIT).

9098-64-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 (APPLICANT) V. ALLISTON DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS CARETAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(5 EMPLOYEES IN THE UNIT).

9099-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #493 (APPLICANT) V. SAMSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN," (6 EMPLOYEES IN THE UNIT).

9110-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. JAY ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITH A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET;



ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(17 EMPLOYEES IN THE UNIT).

9113-64-R: SHOPMEN'S LOCAL UNION #743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS: (AFFILIATED WITH THE AFL-CIO. C.L.C.)  
(APPLICANT) V. M.F. MILLS STEEL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS ENGAGED IN FIELD ERECTION AND INSTALLATION WORK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (27 EMPLOYEES IN THE UNIT).

9114-64-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION, LOCAL No.1059, LONDON, ONTARIO (APPLICANT) V. CANADIAN ENGINEERING AND CONTRACTING Co., LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT PROPOSES THAT THE CERTIFICATE BE RESTRICTED TO THE PROJECT. IN ANDEEN CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1962, P. 295; 63 C.L.L.C. 1142, THE BOARD POINTED OUT THAT SECTION 92 OF THE LABOUR RELATIONS ACT CONTAINED A LEGISLATIVE PROHIBITION AGAINST PROJECT CERTIFICATIONS AND SINCE THE COMING INTO FORCE OF THIS SECTION NO PROJECT CERTIFICATION HAS BEEN ISSUED BY THE BOARD IN A CASE FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS..."

9116-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL No.204 (APPLICANT) V. TRITON CENTRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE MAINTENANCE AND CLEANING OF YORKDALE SHOPPING CENTRE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796."  
(5 EMPLOYEES IN THE UNIT).

9132-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. GAMBIN BROTHERS LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 781 (INTERVENER) V. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE



SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9190-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. LITMAN ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (32 EMPLOYEES IN THE UNIT).

9191-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ROBERTSON-YATES CORP. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

9192-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. VERITAS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

#### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

8963-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. STAR PARQUET MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WESTON PLANT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SHIPPER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	26
NUMBER OF BALLOTS CAST	26
NUMBER OF BALLOTS SEGREGATED	2
(NOT COUNTED)	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO EXCLUDE THE SHIPPER FROM THE BARGAINING UNIT."

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

No Vote Conducted

8848-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. MACK TRUCK MANUFACTURING COMPANY OF CANADA LTD. (RESPONDENT) v. INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (28 EMPLOYEES IN THE UNIT).

IN THIS CASE, APPLICATION FOR CERTIFICATION WAS MADE BY BOTH THE APPLICANT AND THE INTERVENER. BOTH WERE DISMISSED.

IN RESPECT OF THE APPLICATION OF THE APPLICANT THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT ON BEHALF OF EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DOES NOT SATISFY THE BOARD'S REQUIREMENTS AS SET OUT IN THE STATEMENT OF POLICY, DATED FEBRUARY 16, 1951, (C.C.H. CANADIAN LABOUR LAW REPORTS, VOL. 2, ¶60,981), IN THAT THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS FILED DO NOT INDICATE ANY PAYMENT MADE TO THE APPLICANT."

IN RESPECT OF THE APPLICATION OF THE INTERVENER THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE..."

8890-64-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL NO. 1059, LONDON (APPLICANT) v. SANCO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF MIDDLESEX, ELGIN, OXFORD, PERTH, HURON AND BRUCE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN" (14 EMPLOYEES IN THE UNIT).

9025-64-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL NO. 1059 LONDON (APPLICANT) v. HIGGS HIGHWAY FENCING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF MIDDLESEX, ELGIN, OXFORD, PERTH, HURON AND BRUCE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT)

9056-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. MEADOW ELECTRIC (RESPONDENT). (30 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN ORALLY AT THE HEARING THIS APPLICATION IS DISMISSED."

9079-64-R: INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 607 (APPLICANT) V. BETTERIDGE-SMITH CONSTRUCTION CO. LTD. (RESPONDENT). (45 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS ASKED LEAVE TO WITHDRAW ITS APPLICATION, THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE, DISMISSES THE APPLICATION."

9090-64-R: AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 (APPLICANT) V. GENERAL PRINTERS LIMITED (RESPONDENT). (31 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A PRE-HEARING REPRESENTATION VOTE. AN EXAMINER WAS APPOINTED TO CONFER WITH THE PARTIES TO EXAMINE THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT TO MAKE THE REQUISITE ARRANGEMENTS IN CONNECTION WITH THE VOTE. AFTER THE EXAMINER HAD MET WITH THE PARTIES AS DIRECTED, THE REPRESENTATIVE OF THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. THE BOARD IS OF THE OPINION THAT THE REQUEST SHOULD NOT BE GRANTED BUT THAT, HAVING REGARD TO THE STAGE AT WHICH THE REQUEST WAS MADE, THE APPLICATION SHOULD BE DISMISSED AND IT IS ACCORDINGLY DISMISSED."

9100-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA LOCAL 183 (APPLICANT) V. CATAN CONSTRUCTION COMPANY LIMITED (RESPONDENT) (13 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, AND ALSO FAILED TO FILE EVIDENCE OF MEMBERSHIP WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE THE APPLICATION IS THEREFORE DISMISSED."

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8214-64-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. DAISONS PRESS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT THE PLANT MANAGER." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	13
NUMBER OF BALLOTS CAST	13
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT BY LETTER DATED JUNE 15TH, 1964 FILED WITH THE BOARD A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS ON THE REPORT OF THE RETURNING OFFICER DATED JUNE 12TH, 1964. THE BOARD SET THE MATTER DOWN FOR HEARING TO ALLOW THE APPLICANT TO MAKE REPRESENTATIONS AS TO WHY THE BOARD SHOULD CONSIDER THE APPLICANT'S OBJECTIONS AT THIS TIME.

IN ITS STATEMENT OF OBJECTIONS THE APPLICANT ALLEGED THAT TWO PERSONS, AUGUSTO SACCUCCI AND NICK FABIAN, WERE NOT ELIGIBLE TO CAST BALLOTS IN THE REPRESENTATION VOTE. IN SUPPORT OF ITS ALLEGATION THE APPLICANT CLAIMS THAT AUGUSTO SACCUCCI IS A FOREMAN IN THE COMPOSING DEPARTMENT AND EXERCISES MANAGERIAL AUTHORITY. WITH RESPECT TO NICK FABIAN THE APPLICANT CLAIMS THAT HE IS AN OFFICE EMPLOYEE AND IS NOT APPROPRIATE FOR INCLUSION IN THE CRAFT UNIT.

AT THE ORIGINAL HEARING OF THIS APPLICATION ON APRIL 30TH, 1964, THE APPLICANT DID NOT CHALLENGE THE INCLUSION OF EITHER OF THE ABOVE-NAMED PERSONS IN THE BARGAINING UNIT. FURTHER, WHEN THE PARTIES MET WITH THE EXAMINER APPOINTED BY THE BOARD THE APPLICANT FAILED TO TAKE ANY OBJECTION TO SACCUCCI AND FABIAN BEING INCLUDED AS PART OF THE BARGAINING UNIT. SUBSEQUENTLY, THE APPLICANT AGREED IN WRITING TO A LIST OF THOSE ELIGIBLE TO CAST BALLOTS IN THE REPRESENTATION VOTE. THE NAMES OF SACCUCCI AND FABIAN WERE INCLUDED ON THIS LIST. AT THE TAKING OF THE REPRESENTATION VOTE WHEN THE TWO NAMED EMPLOYEES PRESENTED THEMSELVES AND CAST BALLOTS THE APPLICANT TOOK NO OBJECTION.

HAVING CONSIDERED THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT THE BOARD FINDS THAT THE APPLICANT HAD AMPLE OPPORTUNITY TO CHALLENGE THE ELIGIBILITY OF AUGUSTO SACCUCCI AND NICK FABIAN FOR INCLUSION IN THE BARGAINING UNIT PRIOR TO THE TAKING OF THE REPRESENTATION VOTE. ACCORDINGLY WE ARE NOT PREPARED TO ENTERTAIN THE APPLICANT'S OBJECTIONS WHICH WERE MADE ONLY AFTER THE RESULT OF THE VOTE WAS KNOWN TO THE PARTIES. TO PERMIT THE APPLICANT TO MAKE REPRESENTATIONS AT THIS TIME ON THE BASIS SET FORTH IN ITS LETTER OF JUNE 15TH, 1964 WOULD BE TO DISREGARD THE PROCEDURES OF THE BOARD AND THWART THE PURPOSE OF THE REPRESENTATION VOTE..."

8528-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 24 (APPLICANT)  
V. BERTIE DISTRICT HIGH SCHOOL BOARD (RESPONDENT).



UNIT: "ALL SCHOOL CUSTODIANS, JANITORS, CLEANING WOMEN AND MAINTENANCE PERSONNEL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

(SEE INDEXED ENDORSEMENT PAGE 231 )

8891-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DIEOMATIC METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	42
NUMBER OF BALLOTS CAST	42
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30

8903-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (A.F.L.-C.I.O.) (C.L.C.) LOCAL 1250 (APPLICANT) V. CURB CONSTRUCTION COMPANY (RESPONDENT).

VOTING CONSTITUENCY: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE CONSTITUENCY).

NUMBER OF NAMES ON REVISED VOTERS' LIST	10
NUMBER OF BALLOTS CAST	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

8945-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141 WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (APPLICANT) V. WESTERN TIRE AND AUTO SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL RETAIL STORE EMPLOYEES OF THE RESPONDENT AT LONDON SAVE AND EXCEPT SERVICE MANAGER, ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	24
NUMBER OF BALLOTS CAST	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

8980-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. DEHAVILLAND AIRCRAFT OF CANADA LTD. (RESPONDENT). (613 EMPLOYEES).

9103-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA - LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. GAMBIN BROTHERS LIMITED (RESPONDENT). (15 EMPLOYEES).

9140-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. COPE & GURR MACHINERY COMPANY LIMITED (RESPONDENT). (14 EMPLOYEES).

9169-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THORCO MANUFACTURING LIMITED (RESPONDENT). (13 EMPLOYEES).

9212-64-R: THE EMPLOYEE ASSOCIATION OF F. C. WOODCOCK CARTAGE & EXCAVATING LIMITED (APPLICANT) V. F. C. WOODCOCK CARTAGE & EXCAVATING LIMITED (RESPONDENT). (25 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS  
DISPOSED OF DURING AUGUST

8939-64-R: ELLWOOD R. TURNER, FRANK VAN HOVE AND JOHN SCHMIDT AND OTHERS (APPLICANTS) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. BRITISH LEAF TOBACCO COMPANY OF CANADA LIMITED (INTERVENER). (GRANTED) (28 EMPLOYEES).

(RE: BRITISH LEAF TOBACCO COMPANY OF CANADA LIMITED,  
CHATHAM, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS' LIST	28
NUMBER OF BALLOTS CAST	28
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	25

8993-64-R: NASHUA CANADA LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (RESPONDENT). (DISMISSED) (4 EMPLOYEES).

(RE: NASHUA CANADA LIMITED,  
PETERBOROUGH, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WE ARE UNABLE TO FIND ON THE EVIDENCE AND REPRESENTATIONS MADE THAT THE APPLICANT HAS ESTABLISHED ANY BASIS UNDER THE LABOUR RELATIONS ACT FOR ITS APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. IN THE RESULT, THE APPLICATION IS DISMISSED."

9040-64-R: IRENE BARNES (APPLICANT) V. RETAIL, & WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED) (14 EMPLOYEES).

(RE: LONDON, ANSWERING SERVICE,  
LONDON, ONTARIO)

9041-64-R: ZITA SHANTZ (APPLICANT) V. RETAIL & WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9052-64-R: MILDRED COLLINS (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9063-64-R: ELIZABETH MANNING (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9071-64-R: MARION MCCALLUM (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9072-64-R: KATHERINE NADALIN (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9073-64-R: DONNA RUTHVEN (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

9074-64-R: DOLORES STEWART (APPLICANT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, A.F.L., C.I.O., C.L.C. (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: LONDON ANSWERING SERVICE,  
LONDON, ONTARIO).

THE ABOVE MATTERS WERE CONSOLIDATED.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTERS DATED AUGUST 7TH, 1964, AND AUGUST 13TH, 1964 THAT IT HAS ABANDONED ANY CLAIM TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF LONDON ANSWERING SERVICE FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

9084-64-R: WEYERHAEUSER CANADA LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED). (25 EMPLOYEES).

(RE: WEYERHAEUSER CANADA LIMITED,  
SAULT STE. MARIE, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS MADE APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. HAVING REGARD TO THE REPRESENTATIONS MADE TO THE BOARD BY COUNSEL FOR THE RESPONDENT IN HIS LETTER DATED AUGUST 19, 1964, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

9184-64-R: JOHN C.A. HANNIMAN (APPLICANT) V. NORTH BAY GENERAL WORKERS UNION LOCAL NO. 1603 (RESPONDENT). (GRANTED). (6 EMPLOYEES).

(RE: NORTH BAY CONSTRUCTION PRODUCTS LIMITED,  
NORTH BAY, ONTARIO).

9185-64-R: JIM STROOD (APPLICANT) V. NORTH BAY GENERAL WORKERS' UNION LOCAL NO-1603 (RESPONDENT). (GRANTED). (6 EMPLOYEES).

(RE: NORTH BAY CONSTRUCTION PRODUCTS LIMITED,  
NORTH BAY, ONTARIO).

9186-64-R: LAWRENCE MAXWELL (APPLICANT) V. NORTH BAY GENERAL WORKER'S UNION LOCAL NO. 1603 (RESPONDENT). (GRANTED). (6 EMPLOYEES).

(RE: NORTH BAY CONSTRUCTION PRODUCTS LIMITED,  
NORTH BAY, ONTARIO).

9187-64-R: CLIFFORD HARLING (APPLICANT) V. LOCAL 1603 NORTH BAY GENERAL WORKERS UNION (RESPONDENT). (GRANTED). (6 EMPLOYEES).

(RE: NORTH BAY CONSTRUCTION PRODUCTS LIMITED,  
NORTH BAY, ONTARIO).

9188-64-R: LARRY McTIERNAN (APPLICANT) V. NORTH BAY GENERAL WORKERS UNION LOCAL #1603 (RESPONDENT). (GRANTED). (6 EMPLOYEES).



9189-64-R: ROGER VAUTOUR (APPLICANT) V. LOCAL 1603 NORTH BAY GENERAL WORKERS UNION (RESPONDENT). (GRANTED). (6 EMPLOYEES).

(RE: NORTH BAY CONSTRUCTION PRODUCTS LIMITED,  
NORTH BAY, ONTARIO).

THE BOARD ENDORSED THE RECORD IN EACH OF FILES 9184-64-R TO 9189-64-R ABOVE IN PART AS FOLLOWS:-

"THE APPLICANT HAVING APPLIED ON AUGUST 1ST, 1964, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT IN THIS MATTER AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED AUGUST 26TH, 1964 THAT IT NO LONGER REPRESENTS THE EMPLOYEES OF NORTH BAY CONSTRUCTION PRODUCTS LIMITED, THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF NORTH BAY CONSTRUCTION PRODUCTS LIMITED IN THE TOWNSHIP OF WIDDIFIELD, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL  
DISPOSED OF DURING AUGUST 1964

9217-64-U: E.G.M. CAPE & COMPANY (1956) LTD. (APPLICANT) V. S. HUTSULAK ET AL (RESPONDENT). (WITHDRAWN).

9221-64-U: TAYLOR WOODROW OF CANADA LIMITED (APPLICANT) V. K. ROHLAND ETAL (RESPONDENTS). (WITHDRAWN).

9219-64-U: THE MITCHELL CONSTRUCTION CO. (CANADA) LIMITED (APPLICANT) V. NORM. GUTHRIE ETAL (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL  
DISPOSED OF DURING AUGUST 1964

9619-64-U: LOCAL 459, UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS, AFL-CIO-CLO (APPLICANT) V. H.J. HEINZ COMPANY OF CANADA (RESPONDENT). (WITHDRAWN)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF  
DURING AUGUST 1964

9008-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. JEAN PAUL JOANISSE (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 23RD DAY OF MAY, 1964 HE SOUGHT BY THREAT TO COMPEL MRS. ROLLANDE LACROIX TO REFRAIN FROM BECOMING OR CONTINUING TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION..."

9009-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT V. MR. JEAN PAUL JOANISSE (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

IN THE OPINION OF THE BOARD THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATIONS OF THE APPLICANT THAT MRS. ROLLANDE LACROIX WAS DISCHARGED BY THE RESPONDENT ON JULY 13TH, 1964 IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE APPLICANT HAVING FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS, THIS APPLICATION IS DISMISSED"

9010-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT, V. MR. MICHEL JOANISSE (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

IN THE OPINION OF THE BOARD THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATIONS OF THE APPLICANT THAT MRS. ROLLANDE LACROIX WAS DISCHARGED BY THE RESPONDENT ON JULY 13TH, 1964 IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE APPLICANT HAVING FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS, THIS APPLICATION IS DISMISSED."

9011-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOANISSE LIMITED., (I.G.A.) (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

IN THE OPINION OF THE BOARD THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATIONS OF THE APPLICANT THAT MRS. ROLLANDE LACROIX WAS DISCHARGED BY THE RESPONDENT ON JULY 13TH, 1964 IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE APPLICANT HAVING FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS, THIS APPLICATION IS DISMISSED."

9012-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOANISSE LIMITED., (I.G.A.) (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 23RD DAY OF MAY, 1964 IT SOUGHT BY THREAT TO COMPEL MRS. ROLLANDE LACROIX TO REFRAIN FROM BECOMING OR CONTINUING TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION..."

9018-64-U: LOCAL 459, UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS, AFL-CIO-CLC (APPLICANT) V. H.J. HEINZ COMPANY OF CANADA, LIMITED (RESPONDENT). (WITHDRAWN).

9026 64-U: GORDON GANNON (APPLICANT) V. HIGGS HIGHWAY FENCING LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED..."

9027-64-U: GORDON GANNON (APPLICANT) V. SANCO CONSTRUCTION LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED."

9218-64-U: E. G. M. CAPE & COMPANY (1956) LTD. (APPLICANT) V. S. HUTSULAK ET AL (RESPONDENTS). (WITHDRAWN).

9220-64-U: THE MITCHELL CONSTRUCTION CO. (CANADA) LIMITED (APPLICANT) V. NORM. GUTHRIE ET AL (RESPONDENTS). (WITHDRAWN).

9222-64-U: TAYLOR WOODROW OF CANADA LIMITED (APPLICANT) V. K. ROHLAND ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
AUGUST 1964

7803-63-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. FRASER-BRACE ENGINEERING COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE )

8751-64-U: DAVID N. KEDDIE, MASTER PLUMBER AND FORMER EMPLOYEE OF THE BOARD OF EDUCATION (COMPLAINANT) V. THE TORONTO BOARD OF EDUCATION 155 COLLEGE STREET TORONTO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE )

8825-64-U: DONALD LUNDY (COMPLAINANT) V. STARK TRUCK SERVICE (LONDON) LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT HE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT OR PARTICULARLY THE COMPLAINANT ALLEGES THAT HE WAS DISCHARGED BY MR. H. H. STARK, PRESIDENT OF THE RESPONDENT COMPANY, ON THE AFTERNOON OF JUNE 4TH, 1964, BECAUSE OF HIS UNION ACTIVITIES.

HAVING REGARD TO ALL OF THE EVIDENCE THE BOARD FINDS THAT THE COMPLAINANT WAS NOT DISCHARGED FOR UNION ACTIVITY.

THE COMPLAINT ACCORDINGLY IS DISMISSED."

8845-64-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CORPORATION OF THE CITY OF SARNIA (RESPONDENT).

8900-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED. (RESPONDENT).

8925-64-U: CHRISTIAN LABOUR ASSOCIATION OF CANADA (COMPLAINANT) V. CANADIAN WIRE BRUSH CO. (RESPONDENT).

8937-64-U: RIVERSIDE FISHERIES LTD. (COMPLAINANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 (RESPONDENT).

8961-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOANISSE LIMITED (MACARTHUR ROAD PLAZA 1. G. A.) (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON MRS. ROLLANDE LACROX WAS DEALT WITH BY THE RESPONDENT CONTRARY



TO SUBSECTION (A) AND (C) OF SECTION 50 OF THE LABOUR RELATIONS ACT, AND REQUESTS THAT THE RESPONDENT BE REQUIRED TO REINSTATE THE AGGRIEVED PERSON TO HER EMPLOYMENT WITH THE RESPONDENT WITH FULL COMPENSATING WAGES FOR ALL TIME LOST.

MRS. LACROIX COMMENCED HER EMPLOYMENT WITH THE RESPONDENT COMPANY AT ITS MACARTHUR ROAD PLAZA I.G.A. STORE ON MAY 25TH, 1964. SHE WAS ORIGINALLY EMPLOYED AS A CASHIER, BUT SHORTLY THEREAFTER WAS PLACED IN CHARGE OF THE SNACK BAR WHERE SHE REMAINED UNTIL HER DISCHARGE ON JULY 11TH, 1964. MRS. LACROIX TESTIFIED THAT DURING HER EMPLOYMENT WITH THE RESPONDENT SHE HAD NOT BEEN REPRIMANDED BY ANY MEMBER OF MANAGEMENT WITH RESPECT TO HER WORK OR Demeanour, NOR HAD SHE BEEN INFORMED OF ANY COMPLAINTS BY CUSTOMERS. THOMAS REES, THE INTERNATIONAL REPRESENTATIVE OF THE COMPLAINANT, TESTIFIED THAT MICHEL JOANISSE, WHO IS THE MANAGER OF THE MACARTHUR ROAD STORE AND SON OF THE PRESIDENT OF JOANISSE LIMITED, SAID TO HIM SOME TIME AFTER MRS. LACROIX'S DISCHARGE THAT SHE WAS AN EXCELLENT WORKER. HENRI JOANISSE, THE PRESIDENT OF THE RESPONDENT COMPANY, ALSO ADMITTED THAT MRS. LACROIX WAS A GOOD WORKER.

MRS. LACROIX DID ADMIT THAT ON TWO OCCASIONS HENRI JOANISSE HAD SPOKEN TO HER ABOUT HER FAILURE TO "PUNCH UP" CASH AS IT WAS RECEIVED ON EACH SALE. HE INSTRUCTED HER TO FOLLOW THIS PROCEDURE AND NOT TO LEAVE MONEY ON THE TILL. MICHEL JOANISSE ALSO HAD SPOKEN TO HER ON ONE OCCASION ABOUT LEAVING MONEY ON THE TILL. HENRI JOANISSE CORROBORATED MRS. LACROIX'S EVIDENCE THAT AFTER DISCOVERING \$2.98 ON THE TILL, HE HAD INSTRUCTED HER TO "PUNCH UP" THE CASH AFTER EACH SALE. THIS INCIDENT OCCURRED TOWARDS THE END OF JUNE. LACROIX TESTIFIED THAT SHE TOLD HENRI JOANISSE THAT IN THE FUTURE SHE WOULD DO SO. THE EVIDENCE OF HENRI JOANISSE IS THAT TO HIS KNOWLEDGE SHE HAD NOT DISOBEYED HIS INSTRUCTIONS. NEITHER AT THE TIME OF HER DISCHARGE NOR SUBSEQUENTLY WAS MRS. LACROIX'S FAILURE TO "PUNCH UP" CASH ADVANCED BY ANY MEMBER OF MANAGEMENT AS THE REASON FOR HER DISCHARGE.

MRS. LACROIX ALSO ADMITTED THAT SHE EXTENDED CREDIT AT THE SNACK BAR ALTHOUGH SHE WAS AWARE THAT THE STORE POLICY WAS TO OPERATE ON A CASH BASIS. SHE ONLY EXTENDED CREDIT, HOWEVER, TO MICHEL JOANISSE, RICHARD JOANISSE, WHO IS ANOTHER SON OF HENRI JOANISSE, THE ASSISTANT STORE MANAGER AND ONE OTHER EMPLOYEE. REES TESTIFIED THAT HE HAD A TELEPHONE CONVERSATION WITH JEAN PAUL JOANISSE, WHO IS A SON OF HENRI JOANISSE AND MANAGER OF THE BEECHWOOD STORE, AFTER THE DISCHARGE OF MRS. LACROIX. DURING THEIR CONVERSATION JEAN PAUL STATED THAT THE REAL REASON FOR HER DISCHARGE WAS BECAUSE SHE HAD BEEN EXTENDING CREDIT.

HENRI JOANISSE TESTIFIED THAT ON THE OCCASIONS THAT HE WENT INTO THE MACARTHUR ROAD STORE IN THE MORNING MRS. LACROIX LOOKED RED-EYED AND TOUGH. ON ONE OCCASION DURING THE FIRST WEEK OF JUNE HE DETECTED THE SMELL OF BEER ON HER BREATH. IVAN COOK, WHO IS A SUPERVISOR WITH LOEB LIMITED AND WHO WAS ACTING AS AN ADVISOR DURING THE OPENING PERIOD OF THE STORE'S OPERATION, TESTIFIED THAT HE ALSO HAD DETECTED THE SMELL OF BEER ON MRS. LACROIX'S BREATH, ON THREE OCCASIONS, THE LAST TIME BEING EARLY

IN THE AFTERNOON OF JULY 11TH. THE EVIDENCE OF MRS. LACROIX IS THAT ON THAT DATE SHE HAD HAD NOTHING TO DRINK SINCE THE PREVIOUS EVENING OTHER THAN COFFEE OR A SOFT DRINK. SHE ALSO HAD EATEN BREAKFAST AND LUNCH DURING THE INTERVENING PERIOD. MOREOVER, SHE HAD NOT LEFT THE STORE SINCE HER ARRIVAL AT WORK AT 8:30 IN THE MORNING. NEITHER COOK NOR HENRI JOANISSE HAD SPOKEN TO HER CONCERNING THE SMELL OF BEER ON HER BREATH.

COOK TESTIFIED THAT HE HAD HAD A COUPLE OF DISCUSSIONS WITH HENRI JOANISSE CONCERNING MRS. LACROIX'S UNSATISFACTORY PERFORMANCE. DURING THESE DISCUSSIONS COOK HAD NOT MENTIONED THAT HE HAD DETECTED BEER ON MRS. LACROIX'S BREATH. HENRI JOANISSE MADE NO SPECIFIC REFERENCE IN HIS EVIDENCE TO DISCUSSIONS WITH COOK ABOUT MRS. LACROIX, ALTHOUGH HE DID STATE THAT HE HAD RECEIVED COMPLAINTS FROM SUPERVISORS WITH REGARD TO THE SMELL OF BEER ON MRS. LACROIX ON TWO OR THREE OCCASIONS.

HENRI JOANISSE'S EVIDENCE IS THAT HE HAD TOLD HIS SON MICHEL TO GET RID OF MRS. LACROIX FIVE OR SIX TIMES BUT THAT MICHEL HAD NOT DONE SO. NO EXPLANATION WAS GIVEN BY MICHEL OF HIS FAILURE TO DO SO. ON THE MORNING OF JULY 11TH HENRI JOANISSE DECIDED ON HIS OWN INITIATIVE TO DISCHARGE MRS. LACROIX. HE TESTIFIED THAT HE WAS PROMPTED TO DO SO BECAUSE SHE LOOKED TOUGHER THAN USUAL WHEN HE SAW HER IN THE STORE EARLIER THAT MORNING. HE WAS CONCERNED ABOUT CUSTOMERS' REACTIONS TO MRS. LACROIX. HE THEREUPON TELEPHONED MICHEL AND INSTRUCTED HIM TO DISCHARGE HER. COOK TESTIFIED THAT AFTER DETECTING BEER ON MRS. LACROIX'S BREATH ON THE AFTERNOON OF JULY 11TH, HE REPORTED THE MATTER TO MICHEL JOANISSE. MICHEL HAD REPLIED, "ALL RIGHT, I'M GOING TO LET HER GO THIS AFTERNOON." MICHEL MADE NO MENTION OF RECEIVING INSTRUCTIONS FROM HIS FATHER TO DISCHARGE HER THAT MORNING.

MRS. LACROIX TESTIFIED THAT IN THE LATE AFTERNOON OF JULY 11TH MICHEL JOANISSE INFORMED HER OF HER DISCHARGE. WHEN SHE INQUIRED AS TO THE REASON, MICHEL WROTE THE WORD "BEER" ON A PAD AND HANDED IT TO HER. MRS. LACROIX AT THAT POINT STATED THAT SHE DID NOT DRINK ON THE JOB. MICHEL SAID HE KNEW THIS AND WENT ON TO SAY THAT SHE WAS THE BEST GIRL HE HAD HAD ON THE SNACK BAR. MRS. LACROIX SAID THAT AT LEAST HE COULD HAVE GIVEN HER A WEEK'S NOTICE OR A WARNING. MICHEL'S REPLY WAS THAT HE HAD TRIED TO KEEP HER BUT THAT HE WAS ONLY THE MANAGER. HE INDICATED THAT THERE WAS HIGHER AUTHORITY.

WHEN MRS. LACROIX APPLIED FOR A JOB WITH THE RESPONDENT ON MAY 23RD, 1964 SHE WAS INTERVIEWED BY JEAN PAUL JOANISSE. DURING THE INTERVIEW, AT WHICH THERESE MELOCHE WAS PRESENT, JEAN PAUL ASKED THEM WHAT THEY THOUGHT ABOUT THE UNION. MRS. LACROIX REPLIED THAT SHE WAS IN FAVOUR OF A UNION AS SHE HAD PREVIOUSLY WORKED AT LOBLAW'S WHERE THERE WAS A UNION. SHE SAID SHE THOUGHT A UNION WAS A GOOD THING. JEAN PAUL HAD REPLIED THAT IT WAS UP TO THE GIRLS, BUT THAT IF THEY JOINED THE UNION THEY WOULD EVENTUALLY BE THROWN OUT OF THEIR JOBS. THE EVIDENCE OF THERESE MELOCHE CORROBORATES THAT OF MRS. LACROIX.

MRS. LACROIX TESTIFIED THAT SHE HAD DISCUSSED THE UNION WITH THREE OTHER EMPLOYEES IN THE STORE INCLUDING THE HEAD CASHIER. THESE

CONVERSATIONS HAD TAKEN PLACE TWO OR THREE WEEKS PRIOR TO HER DISCHARGE. SHE TOLD THEM THAT SHE WAS A MEMBER OF THE UNION AND THAT SHE THOUGHT THAT THE UNION WAS A GOOD THING.

ROBERT GAUTHIER, WHO IS ASSISTANT MANAGER AT THE MANOR PARK I.G.A. STORE OF THE RESPONDENT, WAS TRANSFERRED TEMPORARILY TO THE MACARTHUR ROAD STORE TO HELP DURING THE OPENING PERIOD. ON THE MORNING OF MAY 28TH HE WAS TOLD BY MICHEL JOANISSE THAT AN EMPLOYEE IN THE STOCK ROOM WAS TALKING ABOUT THE UNION. MICHEL INSTRUCTED GAUTHIER TO DISCHARGE THE EMPLOYEE. GAUTHIER WENT TO THE EMPLOYEE AND TOLD HIM THAT HE WAS BEING DISCHARGED BECAUSE HE WAS TALKING ABOUT THE UNION. THE EMPLOYEE REPLIED THAT HE WAS ONLY INQUIRING WHETHER THERE WAS A UNION IN THE STORE. GAUTHIER REPORTED HIS CONVERSATION WITH THE EMPLOYEE TO MICHEL AND HENRI JOANISSE AND COOK. BOTH COOK AND HENRI TOLD GAUTHIER THAT HE SHOULD NEVER HAVE TOLD THE EMPLOYEE WHY HE WAS BEING DISCHARGED. HENRI JOANISSE ADMITTED THAT WHEN IT WAS REPORTED TO HIM THAT AN EMPLOYEE IN THE STOCK ROOM WAS ORGANIZING FOR THE UNION, AFTER CONSULTATION WITH COOK, HE INSTRUCTED MICHEL TO FIRE THE EMPLOYEE IMMEDIATELY. HENRI'S EVIDENCE IS THAT COOK HAD TOLD GAUTHIER THAT IT WAS A SERIOUS THING TO MENTION THE UNION TO AN EMPLOYEE. COOK TESTIFIED THAT HE HAD ADVISED HENRI TO DISCHARGE THE EMPLOYEE BECAUSE HE HAD NO RIGHT TO ORGANIZE FOR A UNION ON COMPANY TIME. COOK ALSO TESTIFIED THAT HE WAS SURPRISED THAT GAUTHIER HAD MADE SUCH A MESS OF DISCHARGING THE EMPLOYEE AND THAT GAUTHIER HAD BUNGLED THE JOB. COOK IMMEDIATELY RE-HIRED THE EMPLOYEE AND TOLD HIM THAT THERE HAD BEEN A MISTAKE AND TO FORGET IT.

GAUTHIER ALSO TESTIFIED THAT ON A FRIDAY EVENING WHEN HE WAS AT THE BEECHWOOD STORE TO PICK UP A PAYROLL, JEAN PAUL JOANISSE HAD ASKED HIM IF HE HAD HEARD FROM THE UNION ORGANIZER. HE TOLD GAUTHIER THAT IF HE HEARD FROM THE ORGANIZER THAT IT WAS TO BE REPORTED TO HIM. YVON CHARRON, WHO IS EMPLOYED AT THE MANOR PARK I.G.A. STORE AS PRODUCE MANAGER, ALSO TESTIFIED THAT JEAN PAUL JOANISSE HAD ASKED HIM TO LET HIM KNOW IF HE HEARD ANYTHING ABOUT THE UNION.

YVON CHARRON FURTHER TESTIFIED THAT HE HAD GONE TO THE LOCATION OF A UNION MEETING WITH ROGER PROVOST, THE PRODUCE MANAGER OF THE BEECHWOOD STORE. CHARRON DID NOT GO INTO THE MEETING BUT WAITED FOR PROVOST IN THE CAR WHILE PROVOST WENT INTO THE HALL. THE FOLLOWING DAY J. MAREES, THE MANAGER OF THE MANOR PARK STORE, CALLED CHARRON TO HIS OFFICE AND ASKED HIM IF HE HAD GONE TO THE UNION MEETING. MAREES ASKED CHARRON TO TRY TO FIND OUT IF GAUTHIER AND TWO OTHER EMPLOYEES WHO HE NAMED WERE INTERESTED IN THE UNION.

THE EVIDENCE OF MRS. LACROIX, WHICH IS UNDISPUTED, IS THAT THE MANAGER OF THE STORE IN WHICH SHE WAS EMPLOYED, MICHEL JOANISSE, FOUND HER TO BE A SATISFACTORY EMPLOYEE. THE ONLY EVIDENCE OF ANY DISSATISFACTION WITH HER JOB PERFORMANCE RELATES TO HER EXTENDING CREDIT AND HER FAILURE TO "PUNCH UP" SALES. ACCORDING TO THE EVIDENCE OF REES, WHICH IS UNDISPUTED, JEAN PAUL JOANISSE INFORMED HIM THAT THE REAL REASON FOR MRS. LACROIX'S DISCHARGE WAS BECAUSE SHE WAS EXTENDING CREDIT. IN VIEW OF THE FACT THAT SHE WAS LARGELY EXTENDING CREDIT TO THE MANAGERIAL STAFF OF THE STORE WE DO NOT ACCEPT THIS



EXPLANATION AS BEING THE REAL REASON FOR HER DISCHARGE. WITH RESPECT TO HER FAILURE TO "PUNCH UP" THE CASH, IT WAS NOT EVEN SUGGESTED THAT THIS WAS THE REASON FOR HER DISCHARGE. MOREOVER, ACCORDING TO THE EVIDENCE OF HENRI JOANISSE AFTER HE SPOKE TO HER IN JUNE ABOUT LEAVING MONEY ON THE TILL, SO FAR AS HE WAS AWARE, SHE FOLLOWED HIS INSTRUCTIONS.

ACCORDING TO MRS. LACROIX SHE WAS INFORMED BY MICHEL JOANISSE ON JULY 11TH THAT SHE WAS BEING DISCHARGED BECAUSE OF HER BEER DRINKING. IT IS CLEAR FROM HER EVIDENCE THAT MICHEL HIMSELF HAD NO COMPLAINT WITH RESPECT TO THIS CHARGE. IT WAS RATHER, HENRI JOANISSE AND IVAN COOK WHO WERE ALLEGEDLY UNHAPPY WITH HER ON THIS ACCOUNT. THE ONLY TIME, HOWEVER, THAT HENRI JOANISSE HAD DETECTED THE SMELL OF BEER ON MRS. LACROIX WAS EARLY IN JUNE. YET, HE ONLY MADE HIS DECISION TO DISCHARGE HER IN MID-JULY. ACCORDING TO HIS EVIDENCE HE TOLD MICHEL ON MANY OCCASIONS TO GET RID OF MRS. LACROIX. MICHEL FAILED TO ACT ON HIS FATHER'S ADVICE. NEVERTHELESS, WHEN HENRI INSTRUCTED MICHEL TO DISCHARGE MRS. LACROIX ON JULY 11TH, IT APPEARS THAT HENRI HAD LITTLE DIFFICULTY IN PERSUADING MICHEL TO FOLLOW OUT HIS INSTRUCTIONS. IN OUR VIEW, HAD HENRI JOANISSE TRULY DISCHARGED HER BECAUSE OF HER DRINKING HABITS HE COULD AND WOULD HAVE EFFECTIVELY DONE SO LONG BEFORE JULY 11TH. WHILE THE BOARD RECOGNIZES THAT MANAGEMENT HAS THE RIGHT TO DISCHARGE AN EMPLOYEE FOR ANY REASON, OTHER THAN UNION ACTIVITY, WE DO NOT ACCEPT HENRI'S TESTIMONY THAT HE WAS SUDDENLY PROMPTED TO DISCHARGE HER ON JULY 11TH BECAUSE "SHE LOOKED TOUGHER THAN USUAL" ON THAT MORNING.

HAVING REGARD TO MRS. LACROIX'S EVIDENCE RELATING TO HER ACTIVITIES ON JULY 11TH, WE COMPLETELY REJECT THE TESTIMONY OF IVAN COOK THAT HE SMELLED BEER ON HER BREATH IN THE AFTERNOON OF THAT DAY. WE DID NOT FIND COOK TO BE A CREDIBLE WITNESS AND, ACCORDINGLY, WE ARE NOT PREPARED TO GIVE WEIGHT TO ANY OF HIS EVIDENCE.

IN LIGHT OF THE EVIDENCE OF ROBERT GAUTHIER AND YVON CHARRON RELATING TO CONVERSATIONS WITH JEAN PAUL JOANISSE AND MAREES, WE FIND THAT THE MANAGEMENT OF THE RESPONDENT COMPANY ACTIVELY ENDEAVOURED TO ESTABLISH THE IDENTITY OF THOSE EMPLOYEES WHO WERE SYMPATHETIC TO THE UNION. MOREOVER, HAVING REGARD TO GAUTHIER'S EVIDENCE RELATING TO THE ATTEMPTED DISCHARGE OF THE EMPLOYEE IN THE STOCK ROOM, WHICH WE ACCEPT, AND JEAN PAUL'S REMARKS TO MRS. LACROIX AT THE TIME OF HIRING CONCERNING THE UNION, WE ARE OF THE OPINION THAT THE RESPONDENT WAS SO DETERMINED TO THWART THE ORGANIZING EFFORTS OF THE COMPLAINANT UNION THAT IT WAS PREPARED TO DISCHARGE EMPLOYEES WHO IT BELIEVED WERE ASSISTING OR SUPPORTING THE UNION. FURTHER, IN VIEW OF THE DILIGENT EFFORTS MADE BY THE RESPONDENT TO KEEP INFORMED ON THE PROGRESS OF THE UNION'S ORGANIZING CAMPAIGN AND THE OPEN ACKNOWLEDGMENT BY MRS. LACROIX OF HER ATTITUDE TOWARDS THE UNION TO JEAN PAUL JOANISSE AND TO OTHER EMPLOYEES OF THE STORE INCLUDING THE HEAD CASHIER, WE ARE SATISFIED THAT THE RESPONDENT WAS AWARE OF HER MEMBERSHIP IN THE COMPLAINANT UNION. WE WOULD ADD THAT WE FIND IT SIGNIFICANT



THAT NEITHER JEAN PAUL JOANISSE NOR MICHEL JOANISSE WERE CALLED TO GIVE EVIDENCE IN THIS PROCEEDING.

IN ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT MRS. ROLLANDE LACROIX WAS DISCHARGED ON JULY 11TH, 1964 FOR HER UNION ACTIVITY IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY ROLLANDE LACROIX TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HER DISCHARGE ON JULY 11TH, 1964.
- (2) AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM JULY 11TH, 1964 TO AND INCLUDING AUGUST 13TH, 1964, THE RESPONDENT SHALL FORTHWITH PAY ROLLANDE LACROIX THE SUM OF \$225.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY ROLLANDE LACROIX BETWEEN THE DATE OF THE HEARING ON AUGUST 13TH, 1964, AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

THE ONLY UNION ACTIVITY OF MRS. LACROIX REFERRED IN THE EVIDENCE ADDUCED AT THE HEARING TOOK PLACE TWO TO THREE WEEKS PRIOR TO THE DATE OF HER DISCHARGE ON JULY 11TH. IF MANAGEMENT WERE GENUINELY INTERESTED IN DISCHARGING MRS. LACROIX FOR UNION ACTIVITY THEY WOULD HAVE DONE SO AT THAT TIME BECAUSE ALL THE ACTIONS AND MISCONDUCT GIVEN AS REASONS FOR HER DISCHARGE HAD TAKEN PLACE PRIOR TO THAT TIME EXCEPT THAT THE EVIDENCE OF THE EFFECTS OF HER "BEER DRINKING" FROM THE NIGHT BEFORE DURING HER WORKING HOURS THE FOLLOWING DAY CONTINUED UP TO JULY 11TH WHEN HENRI JOANISSE DECIDED POSITIVE ACTION MUST BE TAKEN AND ORDERED MICHEL TO DISCHARGE HER FORTHWITH. THIS, IN MY OPINION, WAS THE REAL REASON FOR HER DISCHARGE AND I WOULD HAVE DISMISSED THE COMPLAINT."

8976-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT).

9033-64-U: LEROY RAWN (COMPLAINANT) V. McMINN CONSTRUCTION (RESPONDENT).

9034-64-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. SPRUCE VILLA HOTEL (SPRUCE VILLA HOTEL COMPANY, LIMITED) (RESPONDENT).

9047-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 183 (COMPLAINANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

9063-64-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA, REGION 75 (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT).

9081-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. REINFORCING STEEL DIVISION OF KELSTEEL LIMITED (RESPONDENT).

9109-64-U: NEIL DUFF (COMPLAINANT) V. BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT LIMITED (RESPONDENT).

9112-64-U: LEROY RAWN (COMPLAINANT) V. McMINN CONSTRUCTION (RESPONDENT).

9183-64-U: JOHANNES ANDREAS PALLASCH (COMPLAINANT) V. MR. BILL WARING (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AS THE BOARD HAS POINTED OUT ON A NUMBER OF OCCASIONS, AND MOST RECENTLY IN THE TORONTO BOARD OF EDUCATION CASE,

"SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT" (SEE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, HEIST INDUSTRIAL SERVICES CASE, (1962) C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16, 263, C.L.S. 76-912). IN OTHER WORDS, AN AGGRIEVED PERSON DOES NOT BECOME ENTITLED TO THE REMEDIES REFERRED TO IN SUBSECTION 4 OF SECTION 65, SUCH AS REINSTATEMENT OR COMPENSATION, SIMPLY BY SHOWING THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST. TO BE ENTITLED TO SUCH RELIEF, HE MUST ESTABLISH THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST FOR A REASON FORBIDDEN BY SOME SPECIFIC PROVISION OF THE ACT OTHER THAN SECTION 65. FOR EXAMPLE, HE MUST SHOW THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST BECAUSE HE IS A MEMBER OF A TRADE UNION, OR BECAUSE HE WAS EXERCISING ONE OF THE RIGHTS ASSURED TO HIM UNDER THE TERMS OF THE LABOUR RELATIONS ACT.

IN THE INSTANT COMPLAINT, THE ONLY GROUND ALLEGED BY THE COMPLAINANT IS THAT THE RESPONDENT DEALT WITH HIM CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE COMPLAINANT'S EMPLOYER, AND THE COMPLAINANT CONTENTS THAT THE RESPONDENT HAS THEREBY VIOLATED SECTION 37 OF THE LABOUR RELATIONS ACT. IN THE HEIST INDUSTRIAL SERVICES CASE, (1962) C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16, 263, C.L.S. 76-912, THE BOARD SAID:

SECTION 37 OF THE LABOUR RELATIONS ACT DECLARES THAT A COLLECTIVE AGREEMENT IS, SUBJECT TO AND FOR THE PURPOSES OF THE ACT, BINDING UPON THE EMPLOYER AND UPON THE TRADE UNION THAT IS A PARTY TO THE AGREEMENT AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT. SECTION 37 IS MERELY DECLARATORY OF THE RIGHTS AND OBLIGATIONS OF THE EMPLOYER, THE TRADE UNION AND THE EMPLOYEES CONCERNED. FAILURE TO OBSERVE THE TERM OF A COLLECTIVE AGREEMENT, STANDING BY ITSELF, IS NOT A CONTRAVENTION OF ANY PROVISION OF THE ACT. IN SO FAR AS THE COMPLAINANTS HERE REST THEIR CASE ON THE ALLEGED VIOLATION OF THE TERMS OF THE COLLECTIVE AGREEMENT, THEY HAVE THEREFORE FAILED TO ESTABLISH THAT THEY HAVE BEEN DEALT WITH CONTRARY TO THE ACT. INDEED, THE ACT EXPRESSLY PROVIDES IN SECTION 34 THAT THE REMEDY FOR FAILURE TO OBSERVE THE PROVISIONS OF A COLLECTIVE AGREEMENT IS THROUGH THE PROCESSING OF A GRIEVANCE, IN RESPECT OF SUCH FAILURE, TO ARBITRATION. IT IS THE FAILURE TO DO OR ABSTAIN FROM DOING WHAT IS REQUIRED OF A PARTY OR A PERSON BY THE DECISION OF THE ARBITRATOR OR ARBITRATION BOARD THAT CONSTITUTES AN ACT OR OMISSION CONTRARY TO THE PROVISIONS OF THE ACT. SEE SECTIONS 34(8) AND 69(1).

SINCE THE COMPLAINANT HERE RESTS HIS CASE SOLELY ON AN ALLEGED VIOLATION OF SECTION 37 OF THE LABOUR RELATIONS ACT, THE COMPLAINT MUST BE DISMISSED."

REQUEST FOR MODIFICATION OF THE ARBITRATION PROCEDURE IN A  
COLLECTIVE AGREEMENT

9004-64-M: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 786 (APPLICANT) V. NORONT STEEL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 240).

REQUESTS FOR RECONSIDERATION OF BOARD'S DECISION

7751-63-R: HOTELS, CLUBS, RESTAURANTS AND TAVERNS EMPLOYEES UNION, LOCAL 261. (AFFILIATED WITH A.F. OF L. - C. I. O. AND C. L. C. (APPLICANT) V. BRUCE MACDONALD LIMITED (RESPONDENT). (GRANTED MAY 4TH, 1964).

FOLLOWING CERTIFICATION OF THE APPLICANT IN THIS CASE, THE RESPONDENT REQUESTED THAT THE BOARD RECONSIDER ITS DECISION. AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN EMPLOYEES AND FOLLOWING THE SUBMISSION OF THE EXAMINER'S REPORT THE BOARD, ON AUGUST 31, 1964, FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS CASHIERS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND PERSONS CLASSIFIED BY THE RESPONDENT AS DESK CLERKS AND TELEPHONE OPERATORS ARE OFFICE STAFF AND ACCORDINGLY ARE EXCLUDED FROM THE BARGAINING UNIT."

8547=64-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. W. J. HUGHES & SONS "CORN FLOWER" LIMITED (RESPONDENT). (GRANTED JUNE 3, 1964).

ON JUNE 3, 1964 THE BOARD CERTIFIED THE APPLICANT - SEE O.L.R.B. MONTHLY REPORT, JUNE 1964.

ON JULY 7, 1964 THE APPLICANT REQUESTED THAT THE BOARD APPOINT AN EXAMINER TO INVESTIGATE THE DUTIES AND RESPONSIBILITIES OF THREE NAMED EMPLOYEES.

ON AUGUST 31, 1964 THE BOARD RULED THAT TWO OF THE NAMED EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT DETERMINED BY THE BOARD. THE BOARD NOTED THE AGREEMENT OF THE PARTIES IN RESPECT OF THE THIRD NAMED EMPLOYEE.

#### INDEXED ENDORSEMENTS - CERTIFICATION

8528-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204 (APPLICANT) V. BERTIE DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AFTER THE TAKING OF THE REPRESENTATION VOTE AND AFTER THE BALLOTS WERE COUNTED, THE APPLICANT AND A GROUP OF EMPLOYEES OBJECTED TO THE VOTE ON THE GROUNDS THAT NORMAN JOBSON, A PERSON CLASSIFIED BY THE RESPONDENT AS A CUSTODIAN, VOTED. THE RESPONDENT AND THE GROUP OF EMPLOYEES NOW ALLEGE THAT NORMAN JOBSON EXERCISES SUPERVISORY FUNCTIONS AND SHOULD HAVE BEEN EXCLUDED FROM THE VOTERS' LIST.

MR. JOBSON'S NAME APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER AND THE LIST FILED BY THE RESPONDENT WAS NOT CHALLENGED.

MR. JOBSON'S NAME WAS ONE OF 12 NAMES APPEARING ON THE VOTERS' LIST WHERE HE WAS DESCRIBED AS A "CUSTODIAN". THE VOTERS' LIST WAS APPROVED IN WRITING BY THE APPLICANT AND THE RESPONDENT.



ALTHOUGH THE APPLICANT HAD SCRUTINEERS AT THE POLL AT THE TIME THE VOTE WAS TAKEN, WHEN MR. JOBSON APPEARED AND VOTED NO OBJECTION WAS TAKEN TO HIS ELIGIBILITY TO CAST A BALLOT.

THE CERTIFICATION OF CONDUCT OF ELECTION WAS SIGNED BY BOTH PARTIES FOLLOWING THE TAKING OF THE REPRESENTATION VOTE.

HAVING REGARD TO THE FACTS THAT THE PARTIES AGREED THAT MR. JOBSON WAS A CUSTODIAN INCLUDED IN THE BARGAINING UNIT AND NO CHALLENGE WAS MADE TO HIS ELIGIBILITY TO VOTE, THAT THERE IS NO EVIDENCE THAT HIS DUTIES HAD BEEN CHANGED DURING THE RELEVANT PERIOD, THAT THERE IS NO EVIDENCE THAT THE APPLICANT OR THE GROUP OF EMPLOYEES WERE UNAWARE OF MR. JOBSON'S POSITION OR WERE UNABLE TO MAKE THE NECESSARY INQUIRIES WITH RESPECT THERETO, THE OBJECTIONS TO THE REPRESENTATION VOTE ARE ACCORDINGLY DISMISSED..."

8531-64-R: INTERNATIONAL UNION OF MINE MILL & SMELTER WORKERS (CANADA) (APPLICANT) V. SILVER TOWN MINES, LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE EMPLOYEES WHO SIGNED THE COMBINATION APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS FOR INITIATION FEES FILED BY THE INTERVENER, THE UNITED STEEL WORKERS OF AMERICA, AS EVIDENCE OF MEMBERSHIP WERE ALL APPROACHED TO AND DID SIGN THEM ON THE PREMISES OF THE RESPONDENT EMPLOYER. THE CIRCUMSTANCES AND MANNER IN WHICH THESE SIGNATURES WERE SOUGHT ON THE EMPLOYER'S PREMISES AND THE STATEMENTS MADE TO THEM BY THE REPRESENTATIVE FOR THE INTERVENER COULD ONLY HAVE MANIFESTED TO THE EMPLOYEES A STRONG PARTIALITY ON THE PART OF THEIR EMPLOYER FOR THE INTERVENER AND A DESIRE AND INTEREST BY THE COMPANY THAT ITS EMPLOYEES DESIST IN THEIR ALLEGIANCE TO THE APPLICANT AND SUPPORT THE INTERVENER. IN OUR OPINION, THE EMPLOYEES WOULD HAVE HAD EVERY REASON TO EXPECT THAT THE IDENTITY OF THOSE WHO SUPPORTED THE INTERVENER BY SIGNING APPLICATIONS FOR MEMBERSHIP CARDS WOULD LIKELY BE DISCLOSED TO MANAGEMENT. INDEED, AS SUBSEQUENT EVENTS REVEALED, THE INTERVENER DID SHOW THEIR CARDS TO THE EMPLOYER. WE ARE CONSTRAINED TO INFER THAT MANAGEMENT'S KNOWN INTERESTS AND WISHES IN THE MATTER, EXHIBITED AS THEY WERE IN THE CIRCUMSTANCES OF THIS CASE, BROUGHT PRESSURE AND UNDUE INFLUENCE TO BEAR ON THE EMPLOYEES TO DEMONSTRATE THEIR LOYALTY TO THE COMPANY BY SIGNING CARDS FOR AND SUPPORTING THE UNION KNOWN BY THEM TO BE PREFERRED BY THEIR EMPLOYER. HAVING REGARD TO THE MANNER AND CIRCUMSTANCES IN WHICH IT ORIGINATED AND WAS OBTAINED, WE ARE UNABLE TO PLACE ANY RELIANCE ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE INTERVENER AS INDICATIVE OF THE TRUE WISHES OF THE EMPLOYEES.

THE RESPONDENT AND INTERVENER ALLEGE THAT A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THEM ON JUNE 15TH, 1964, CONSTITUTES A BAR TO THE APPLICATION FOR CERTIFICATION BY THE INTERNATIONAL UNION OF MINE MILL & SMELTER WORKERS. THE CIRCUMSTANCES IN WHICH AND THE PRECIPITOUS HASTE WITH WHICH THIS AGREEMENT WAS MADE INDICATES TO US THAT THERE WAS LITTLE OR NO PRIOR NEGOTIATION OR BARGAINING OF THE TERMS THEREOF. IT WAS WELL KNOWN TO BOTH PARTIES

THAT THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT UNION WAS THEN IN PROGRESS, THAT A SUBSTANTIAL NUMBER OF EMPLOYEES HAD SIGNED FOR THE APPLICANT, AND THAT AN APPLICATION FOR CERTIFICATION BY THIS UNION WAS IMMINENT. IT IS ABUNDANTLY CLEAR THAT THE AGREEMENT HAVING BEEN MADE IN THE CIRCUMSTANCES IN WHICH IT WAS AND IN THE SHADOW OF THE APPLICANT'S ORGANIZATIONAL CAMPAIGN, CANNOT CONSTITUTE A BAR TO THE APPLICANT UNION'S APPLICATION FOR CERTIFICATION (SEE THE BROWN'S BREAD LIMITED CASE, D.L.S. 7-1173; THE T. CRITTAL & SONS CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1949-54 TRANSFER BINDER, ¶16, 090).

IN OUR OPINION, THE DOCUMENT RELIED ON AS BEING IN THE NATURE OF A PETITION IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT IS INEXTRICABLY CONNECTED WITH AND ORIGINATED AND RESULTED FROM THE EVENTS AND CIRCUMSTANCES WHICH PRECEDED IT. EVEN IF IT COULD BE TREATED AS A PETITION IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT AND NOT AS A MERE AFFIRMATION OF THEIR MEMBERSHIP, WE ARE UNABLE TO ACCEPT THIS DOCUMENT AS RELIABLE EVIDENCE OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED IT OR AS WEAKENING OR QUALIFYING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

THE APPLICATION FOR CERTIFICATION BY WAY OF INTERVENTION BY THE INTERVENER IS DISMISSED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. THE INTERVENER'S AGREEMENT WAS SIGNED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN AND IT CANNOT OPERATE AS A BAR ON THE STATED BOARD POLICY IN THE BROWNS BREAD CASE. ON THE OTHER HAND IT MUST BE BORNE IN MIND THAT THE ACTIVITIES OF THE REPRESENTATIVE OF THE INTERVENER AT SILVERTOWN OCCURRED WITHIN THE GENERAL CONTEXT OF AN ESTABLISHED CONTRACTUAL RELATIONSHIP WITH THE RELATED COMPANIES OF THE RESPONDENT AT HIGH HO AND GLEN LAKE MINES.

IN VIEW OF ALL THE CIRCUMSTANCES IN THIS CASE, I AM OF THE OPINION THAT THE APPLICANT SHOULD NOT BE CERTIFIED OUTRIGHT BUT THAT A ONE-WAY VOTE SHOULD BE CONDUCTED WITH THE NAME OF THE APPLICANT ONLY APPEARING ON THE BALLOT."

8855-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466  
(APPLICANT) v. O.J. GAFFNEY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AFTER CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS THAT THIS IS AN APPLICATION FALLING WITHIN SECTION 6 (2) OF THE LABOUR RELATIONS ACT...

ASSUMING THAT SOME OF THE WORK PERFORMED BY PERSONS OTHER THAN J. NAGOVA AND W.J. NAGOVA CAN BE CLASSIFIED AS CARPENTRY WORK OR AS WORK CLAIMED BY THE APPLICANT UNION, WE ARE UNABLE TO FIND ON THE BASIS OF THE EVIDENCE BEFORE US THAT THESE OTHER EMPLOYEES PERFORMED SUCH WORK FOR MORE THAN FIFTY PER CENT OF THEIR TIME. ON THE OTHER HAND WE FIND THAT J. NAGOVA AND W.J. NAGOVA DID PERFORM CARPENTRY WORK FOR MORE THAN FIFTY PER CENT OF THEIR TIME. IT HAS BEEN THE PRACTICE OF THE BOARD IN CASES WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE

THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION..."

INDEXED ENDORSEMENTS - SECTION 65

7803-63-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT V. FRASER-BRACE ENGINEERING COMPANY LIMITED (RESPONDENT)).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE UNCONTRADICTED TESTIMONY OF ROY RAU, THE AGGRIEVED PERSON, IS THAT ON OR ABOUT AUGUST 28TH, 1963, HE APPLIED FOR EMPLOYMENT WITH THE RESPONDENT AND WAS TOLD BY A FOREMAN OF THE COMPANY, ONE MR. S. WORKMAN, THAT THE COMPANY WOULD NOT HIRE HIM BECAUSE HE WAS A MEMBER OF A UNION.

THE RESPONDENT IN THIS CASE APPEARED AT THE HEARING BUT ELECTED NOT TO CALL ANY EVIDENCE OR TO OFFER ANY EXPLANATION FOR THE CONDUCT OF ITS FOREMAN. THE POSITION TAKEN BY COUNSEL FOR THE RESPONDENT IN THIS RESPECT WAS THAT THE COMPLAINANT HAD NOT MADE OUT ANY CASE AGAINST THE RESPONDENT WHICH WOULD REQUIRE AN EXPLANATION OR ANSWER. AMONG OTHER THINGS, HE ARGUED THAT THE COMPLAINANT HAD NOT ESTABLISHED, AS IT WAS BOUND TO DO TO BE ENTITLED TO RELIEF UNDER SECTION 65 OF THE ACT, THAT (A) THE RESPONDENT WOULD HAVE HIRED RAU IN ANY EVENT. (B) THE RESPONDENT WAS IN FACT AT THAT TIME HIRING CARPENTERS AND (C) THE RATE AND AMOUNT OF WAGES THAT RAU WOULD HAVE RECEIVED IF HE HAD BEEN HIRED AND THE LENGTH OF HIS EMPLOYMENT.

RAU ALSO TESTIFIED THAT HE HAD BEEN PREVIOUSLY EMPLOYED AS A CARPENTER BY OTHER EMPLOYERS BUT THAT HE HAD BEEN OUT OF WORK FOR SOME TIME PRIOR TO AUGUST 28TH. HE STATED THAT HE HAD APPROACHED THE COMPANY ON SEVERAL OCCASIONS BUT IT WAS ONLY ON THE LAST OCCASION, AUGUST 28TH, THAT HE WAS DIRECTED TO SEE WORKMAN. IT IS OBVIOUS THAT WHEN HE APPROACHED THE RESPONDENT FOR WORK ON AUGUST 28TH, RAU WAS IN NEED OF EMPLOYMENT, AND WOULD CERTAINLY HAVE WORKED IF THE RESPONDENT HAD HIRED HIM. IN THE ABSENCE OF ANY EXPLANATION TO THE CONTRARY WHICH, IF IT HAD EXISTED, OBVIOUSLY COULD HAVE BEEN EASILY AND READILY GIVEN BY WORKMAN AT THE TIME OR BY THE COMPANY AT THE HEARING, WE ARE CONSTRAINED TO INFER FROM THE CIRCUMSTANCES AND FROM WORKMAN'S REMARKS TO THE EFFECT THAT THE COMPANY WOULD NOT HIRE HIM BECAUSE HE WAS A MEMBER OF THE UNION, THAT WHEN RAU APPLIED FOR WORK ON AUGUST 28TH, THERE WAS IN FACT A JOB OPEN IN THE EMPLOY OF THE RESPONDENT FOR A CARPENTER OF HIS QUALIFICATIONS. ALSO IN THE ABSENCE OF ANYTHING TO THE CONTRARY FROM THE RESPONDENT, WE FEEL OBLIGED TO INFER FROM WORKMAN'S REMARKS THAT IF HE HAD BEEN HIRED RAU WOULD HAVE COMMENCED WORK IMMEDIATELY ON AUGUST 28TH.

IT IS MANIFEST IN THE CIRCUMSTANCES THAT THE PROBABLE LENGTH OF RAU'S EMPLOYMENT AND THE RATE AND AMOUNT OF WAGES WHICH HE WOULD HAVE BEEN PAID HAD HE BEEN EMPLOYED BY THE RESPONDENT ARE MATTERS PECULIARLY AND EXCLUSIVELY WITHIN THE KNOWLEDGE OF THE RESPONDENT. AS THE RESPONDENT AGAIN DID NOT SEE FIT TO ADDUCE WHAT WOULD LIKELY HAVE BEEN THE BEST EVIDENCE CONCERNING THESE MATTERS, THE BOARD MUST RELY AND MAKE ITS FINDINGS ON WHATEVER EVIDENCE IS BEFORE IT. HAVING REGARD TO RAU'S TESTIMONY CONCERNING WORK



HE HAD DONE AS A CARPENTER FOR OTHER EMPLOYERS IN THE INDUSTRY AND TO THE FACT THAT HE STATED THAT HE HAD BEEN PAID \$3.05 PER HOUR BY ONE EMPLOYER, WE ARE IMPELLED TO MAKE CERTAIN INFERENCES OF FACT AS A BASIS FOR COMPUTING HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS OCCASIONED BY THE RESPONDENT'S REFUSAL TO HIRE HIM. IN THIS RESPECT AND WHILE THE AMOUNT MIGHT BE BELOW STANDARD WAGES IN THE INDUSTRY FOR THIS AREA, WE THINK IT PROBABLE THAT IF HE HAD BEEN HIRED, RAU WOULD HAVE EARNED AT LEAST \$2.00 PER HOUR, AND THAT HE WOULD HAVE WORKED 8 HOURS PER DAY FOR AT LEAST 5 DAYS. IN OTHER WORDS WE WOULD ASSESS HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS TO BE AT LEAST \$80.00. WE FIND ALSO THAT RAU MADE REASONABLE AND DILIGENT EFFORTS TO OBTAIN OTHER EMPLOYMENT DURING THIS TIME AND THAT HE WAS UNSUCCESSFUL IN DOING SO.

OUR COLLEAGUE IN PARAGRAPH 3 OF HIS DISSENT APPEARS TO EQUATE THE BURDEN OF PROOF RELATING TO THE IDENTIFICATION AND ASSOCIATION OF A NAMED RESPONDENT UNION WITH A STRIKE IN A STRIKE DECLARATION CASE TO THE ONUS OF PROOF INCUMBENT ON A COMPLAINANT TO PROVE DISCRIMINATION BY AN EMPLOYER IN A COMPLAINT UNDER SECTION 65. EVEN IF WE WERE TO CONCEDE SOME ANALOGY IN THE TWO SITUATIONS, WE ARE UNABLE TO APPRECIATE HOW THAT SHOULD PRECLUDE THE INFERENCES WHICH WE FEEL COMPELLED TO DRAW IN ALL THE CIRCUMSTANCES OF THIS CASE.

HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS CASE IT IS THE BOARD'S DETERMINATION:-

- (1) THAT ON OR ABOUT THE 28TH DAY OF AUGUST, 1963, THE RESPONDENT DID DISCRIMINATELY REFUSE TO EMPLOY THE AGGRIEVED ROY RAU BECAUSE OF HIS UNION MEMBERSHIP CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT.
- (2) THAT AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS RESULTING FROM THE RESPONDENT'S DISCRIMINATORY REFUSAL TO EMPLOY HIM, THE RESPONDENT SHALL FORTHWITH PAY TO ROY RAU THE SUM OF \$80.00."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT.

IN THIS CASE NO EVIDENCE WAS PRESENTED TO SHOW THAT THERE WAS JOB VACANCY WHEN THE AGGRIEVED PERSON APPLIED FOR WORK ON AUGUST 28, 1963. THE COMPLAINANT'S COMPLAINT THEREFORE DOES NOT SPECIFY ANY OFFENCE WITHIN THE PROVISIONS OF THE LABOUR RELATIONS ACT AND I WOULD ACCORDINGLY DISMISS THE COMPLAINT. HAD, HOWEVER, THE COMPLAINANT OVERCOME THIS FATAL DEFECT IN THE EVIDENCE, (WHICH HE DID NOT DO), NO EVIDENCE WAS ADDUCED UPON WHICH THE BOARD COULD MAKE ANY DEFINITIVE COMPENSATION AWARD. THIS LACK OF EVIDENCE, IF INDEED THE FACTS AS ALLEGED BY THE COMPLAINANT DID EXIST, WERE AVAILABLE TO IT.



THE AGGRIEVED PERSON IN THIS APPLICATION WAS REPRESENTED BY THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND IT IS A MATTER OF RECORD THAT THIS UNION WAS CERTIFIED TO REPRESENT ALL CARPENTERS AND THEIR APPRENTICES OF THE RESPONDENT ON SEPTEMBER 17, 1963, COVERING A SIX COUNTY AREA, BOARD FILE No. 6834-63-R. THIS CERTIFICATE COVERED THE PROJECT AT WHICH THE AGGRIEVED PERSON ROY ROU APPLIED FOR WORK AS A CARPENTER. IN MY VIEW IT WAS POSSIBLE FOR THE UNION ACTING AS AGENT FOR THE AGGRIEVED PERSON TO CARRY OUT AN INVESTIGATION AMONGST ITS MEMBERS WORKING FOR THE RESPONDENT, AS TO WHETHER OR NOT ON THE ABOVE DATE, AUGUST 28, 1963, THE RESPONDENT WAS HIRING CARPENTERS, HOW LONG HE WOULD LIKELY HAVE WORKED IF HIRED, AND WHAT THE RATE OF PAY WOULD HAVE BEEN. HAD THIS INFORMATION BEEN SECURED AND PRESENTED IN EVIDENCE IT WOULD HAVE BEEN REASONABLE TO EXPECT THE COMPANY TO GIVE SOME EXPLANATION FOR ITS ACTION.

ONE MUST NOT BE UNMINDFUL OF THE FACT THAT WELL ORGANIZED SPONTANEOUS STRIKES OCCUR IN THE CONSTRUCTION INDUSTRY, BUT UNIONS ARE NOT CALLED UPON IN A PROCEEDING FOR A DECLARATION THAT A STRIKE IS UNLAWFUL TO GIVE AN EXPLANATION FOR THE ACTION OF THEIR MEMBERS, UNLESS THE EMPLOYER ON INVESTIGATION IS ABLE TO ASSOCIATE THE UNION WITH THE STRIKE ACTION OF THE EMPLOYEES.

FOR THE ABOVE REASONS I WOULD HAVE DISMISSED THE APPLICATION."

8751-64-U: DAVID N. KEDDIE, MASTER PLUMBER AND FORMER EMPLOYEE OF THE BOARD OF EDUCATION (COMPLAINANT) V. THE TORONTO BOARD OF EDUCATION 155 COLLEGE STREET TORONTO (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AS THE BOARD HAS POINTED OUT ON A NUMBER OF OCCASIONS, "SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT" (SEE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P.62, HEIST INDUSTRIAL SERVICES CASE, (1962) C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16,263, C.L.S. 76-912). IN OTHER WORDS, AN AGGRIEVED PERSON DOES NOT BECOME ENTITLED TO THE REMEDIES REFERRED TO IN SUBSECTION 4 OF SECTION 65, SUCH AS REINSTATEMENT OR COMPENSATION, SIMPLY BY SHOWING THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST. TO BE ENTITLED TO SUCH RELIEF, HE MUST ESTABLISH THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST FOR A REASON FORBIDDEN BY SOME SPECIFIC PROVISION OF THE ACT OTHER THAN SECTION 65. FOR EXAMPLE, HE MUST SHOW THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST BECAUSE HE IS A MEMBER OF A TRADE UNION, OR BECAUSE HE WAS EXERCISING ONE OF THE RIGHTS ASSURED TO HIM UNDER THE TERMS OF THE LABOUR RELATIONS ACT.

IN SO FAR AS THE INSTANT COMPLAINT IS CONCERNED, THE COMPLAINANT'S STATEMENTS TO THE FIELD OFFICER DO NOT SHOW THAT HE WAS DISCHARGED BECAUSE OF HIS "UNION ACTIVITY" OR BECAUSE HE WAS EXERCISING SOME RIGHTS TO WHICH HE IS ENTITLED BY VIRTUE OF THE LABOUR RELATIONS ACT. THE LABOUR RELATIONS ACT IS NOT DESIGNED TO BE A COMPREHENSIVE CODE COVERING EVERY SITUATION IN WHICH AN EMPLOYEE MAY FEEL THAT HE IS BEING IMPROPERLY TREATED BY AN EMPLOYER. THE BOARD'S JURISDICTION UNDER SECTION 65 IS LIMITED TO DEALING WITH GRIEVANCES THAT AN EMPLOYEE MAY HAVE AGAINST AN EMPLOYER WITH RESPECT

TO MATTERS THAT ARISE UNDER THE LABOUR RELATIONS ACT. IT HAS NO JURISDICTION TO DEAL WITH MATTERS THAT DO NOT COME UNDER THE ACT. TO OBTAIN REDRESS FOR GRIEVANCES OTHER THAN THOSE THAT ARISE UNDER THE ACT, THE EMPLOYEE MUST SEEK RELIEF, IF ANY RELIEF IS AVAILABLE TO HIM, IN ANOTHER FORUM.

THE COMPLAINT IS DISMISSED."

SPECIAL ENDORSEMENTS IN CONCILIATION APPLICATIONS

8859-64-C: LOCAL UNION 536, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (APPLICANT) V. MANSFIELD RUBBER (CANADA) LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE PARTIES HAVING JOINTLY APPLIED FOR AN EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THEM PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT, THE BOARD CONSENTS TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENT ENTERED INTO ON JULY 1ST, 1963, TERMINATION TO BE EFFECTIVE ON AUGUST 19TH, 1964.

THE APPLICANT HAVING GIVEN NOTICE AND THE PARTIES HAVING MET AND BARGAINED FOR THE PURPOSE OF MAKING A COLLECTIVE AGREEMENT, THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES ENTERED INTO ON JULY 1ST, 1963.

THE MATTER IS REFERRED TO THE MINISTER."

8881-64-C: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 233 (APPLICANT) V. D.H.I. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT APPLIED TO THE BOARD REQUESTING THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES.

A COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE APPLICANT AND CERAMETAL INDUSTRIES LIMITED (HEREINAFTER REFERRED TO AS CERAMETAL) COVERING A UNIT OF EMPLOYEES OF CERAMETAL, EFFECTIVE FROM JANUARY 1ST, 1963 UNTIL DECEMBER 31ST, 1963 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE APPLICANT CONTENDS THAT CERAMETAL SOLD ITS BUSINESS TO D.H.I. LIMITED (HEREINAFTER REFERRED TO AS D.H.I.) WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT AND THAT BY VIRTUE OF THE SAID SECTION IT CONTINUED TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF D.H.I. IN THE LIKE BARGAINING UNIT. THE APPLICANT ACCORDINGLY CLAIMS THAT IT IS ENTITLED TO THE GRANTING OF ITS REQUEST BY THE BOARD.

A DEBENTURE DATED MAY 1ST, 1962 ISSUED BY CERAMETAL WAS FILED AS AN EXHIBIT WITH THE BOARD. BY THE TERMS OF THE DEBENTURE CERAMETAL CHARGED AND MORTGAGED THE WHOLE OF ITS UNDERTAKING AND ASSETS IN FAVOUR OF CAPITAL FUNDS (I.A.C. ONTARIO) LIMITED (HEREINAFTER REFERRED TO AS CAPITAL) TO SECURE MONIES ADVANCED BY CAPITAL WHICH WERE TO BE REPAID IN MONTHLY INSTALMENTS COMMENCING ON MAY 1ST, 1963. THE DEBENTURE PROVIDED THAT IN

DEFAULT OF PAYMENT BY CERAMETAL, CAPITAL COULD DECLARE THE SECURITY TO BE ENFORCEABLE AND SELL, LEASE OR OTHERWISE DISPOSE IN ANY WAY WHATSOEVER OF ALL OR ANY PART OF THE PROPERTY AND ASSETS CHARGED OR MORTGAGED BY THE DEBENTURE.

COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT CERAMETAL DEFAULTED IN THE PAYMENT OF PRINCIPAL OR ANY INTEREST IN MAY 1963. CAPITAL, IN ACCORDANCE WITH THE TERMS OF THE DEBENTURE, DECLARED THE SECURITY OF THE DEBENTURE ENFORCEABLE AND APPOINTED THE CLARKSON COMPANY LIMITED (HEREINAFTER REFERRED TO AS CLARKSON) RECEIVER AND MANAGER OF THE UNDERTAKING AND ASSETS OF CERAMETAL. CAPITAL AND CLARKSON BY INSTRUMENTS IN WRITING DATED JULY 8TH AND 9TH, 1963 WHICH WERE FILED AS EXHIBITS WITH THE BOARD TRANSFERRED BY A NUMBER OF SEPARATE CONVEYANCES SUBSTANTIALLY THE WHOLE OF THE UNDERTAKING AND ASSETS OF CERAMETAL TO DALITE CORPORATION (CANADA) LIMITED (HEREINAFTER REFERRED TO AS DALITE) OR BERNARD BURTON (HEREINAFTER REFERRED TO AS BURTON) AS TRUSTEE FOR DALITE. MORE PARTICULARLY THE ASSETS CONSISTED OF LAND AND PREMISES, LEASES, BOOK DEBTS, MACHINERY, EQUIPMENT, FURNITURE, INVENTORIES, RAW MATERIALS, WORK IN PROGRESS AND FINISHED GOODS. BY INSTRUMENTS IN WRITING DATED JULY 9TH AND 12TH, 1963 WHICH WERE FILED AS EXHIBITS WITH THE BOARD, DALITE AND BURTON, IN TURN, CONVEYED TO D.H.I. SUBSTANTIALLY THE SAME UNDERTAKING AND ASSETS THAT HAD BEEN CONVEYED TO THEM. IN ADDITION TO THE ASSETS REFERRED TO ABOVE, DALITE AND BURTON PURPORTED TO CONVEY TO D.H.I. ALL GOODWILL CONNECTED WITH THE BUSINESS CARRIED ON BY CERAMETAL, ALL CONTRACTS AND AGREEMENTS FOR THE SUPPLY OF GOODS AND PERFORMANCE OF SERVICES BY CERAMETAL INCLUDING UNFILLED ORDERS, WORK IN PROGRESS IN CONNECTION WITH SUCH ORDERS, AND UNFILLED ORDERS FOR THE SUPPLY BY OTHERS TO CERAMETAL OF RAW MATERIALS. D.H.I. COVENANTED TO ASSUME, AMONG OTHER LIABILITIES OF CERAMETAL, ALL UNPAID WAGES AND SALARIES OF THE EMPLOYEES OF CERAMETAL.

COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT THE MANUFACTURING OPERATIONS OF CERAMETAL CONTINUED WITHOUT INTERRUPTION FROM THE TIME THAT CAPITAL DECLARED THE SECURITY OF THE DEBENTURE ENFORCEABLE AND APPOINTED A RECEIVER, UNTIL TITLE TO THE UNDERTAKING AND ASSETS OF CERAMETAL PASSED TO D.H.I. MOST OF THE BARGAINING UNIT EMPLOYEES OF CERAMETAL REMAINED AT WORK IN THE PLANT DURING THIS PERIOD AND CONTINUED IN THEIR EMPLOYMENT AS EMPLOYEES OF D.H.I. WHEN IT BECAME OWNER AND ASSUMED OPERATING CONTROL OF THE PLANT IN JULY OF 1963.

THE RESPONDENT CONTENTS THAT THE TRANSACTION AS OUTLINED IN THE ABOVE PARAGRAPHS DID NOT CONSTITUTE THE SALE OF THE BUSINESS OF CERAMETAL TO D.H.I. WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE RESPONDENT ARGUES THAT D.H.I. ONLY PURCHASED THE ASSETS OF CERAMETAL BUT THAT THERE WAS NO SALE OF ANY EXISTING BUSINESS. IN SUPPORT OF HIS ARGUMENT COUNSEL STATED THAT THERE WAS NO SALE OF THE GOODWILL OF CERAMETAL OR OF THE ORDERS PLACED BY CUSTOMERS WITH THAT COMPANY. WHETHER OR NOT, IN FACT, THERE WAS A CONVEYANCE OF THE GOODWILL OF CERAMETAL OR THE CONTRACTS FOR GOODS AND SERVICES, WE DO NOT ACCEPT THE ARGUMENT OF COUNSEL THAT THE BUSINESS ACQUIRED BY D.H.I. WAS NOT AN EXISTING BUSINESS. WHILE, IN



EFFECT, CAPITAL FORECLOSED CERAMETAL UNDER THE TERMS OF THE DEBENTURE, THE BUSINESS TAKEN OVER BY D.H.I. WAS AN OPERATING CONCERN. THE FACT THAT CERAMETAL MAY STILL BE IN EXISTENCE AS A CORPORATE ENTITY HAS NO RELEVANCE.

COUNSEL FOR THE RESPONDENT FURTHER STATED THAT D.H.I. IS NOT LIABLE FOR THE FINANCIAL OBLIGATIONS INCURRED BY CERAMETAL. ACCORDING TO THE DOCUMENTARY EVIDENCE, HOWEVER, D.H.I. PURPORTED TO UNDERTAKE CERTAIN LIABILITIES OF CERAMETAL. EVEN IF WE WERE TO ASSUME THAT D.H.I. WAS NOT RESPONSIBLE FOR ANY OF THE LIABILITIES OF CERAMETAL, WE FAIL TO APPRECIATE THE ANALOGY DRAWN BY COUNSEL FOR THE RESPONDENT BETWEEN ANY IMMUNITY D.H.I. MIGHT HAVE AGAINST THE OBLIGATIONS OF CERAMETAL AND THE CONTINUATION OF THE BARGAINING RIGHTS OF THE APPLICANT. IT SHOULD BE BORNE IN MIND THAT UNDER SECTION 47A OF THE LABOUR RELATIONS ACT THE UNION ONLY ACQUIRES THE RIGHT TO BARGAIN ON BEHALF OF THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS IS SOLD. THE NEW OWNER IS NOT BOUND BY ANY COLLECTIVE AGREEMENT ENTERED INTO BY THE PREDECESSOR EMPLOYER.

THE ASSETS OF CERAMETAL WERE ORIGINALLY TRANSFERRED BY CAPITAL AND CLARKSON BY SEPARATE CONVEYANCE TO DALITE (OR BURTON AS TRUSTEE). TAKEN IN THEIR TOTALITY, HOWEVER, THE CONVEYANCES AMOUNTED TO THE ENTIRE UNDERTAKING AND ASSETS (WITH CERTAIN SPECIFIED EXCEPTIONS THAT WERE RETAINED BY CAPITAL) OF CERAMETAL. THERE WAS ONLY A MOMENTARY VESTING OF THE ASSETS OF CERAMETAL IN DALITE. NO BENEFICIAL INTEREST IN THE ASSETS APPEARS TO HAVE PASSED TO DALITE, AS THE CONVEYANCES FROM DALITE AND BURTON TO D.H.I. REFER ONLY TO THE ASSETS OF CERAMETAL.

HAVING REGARD TO THE FACT THAT D.H.I. ACQUIRED SUBSTANTIALLY THE WHOLE UNDERTAKING AND ASSETS OF CERAMETAL AND THE FACT THAT THE MANUFACTURING OPERATION IN THE PLANT CONTINUED WITHOUT INTERRUPTION AND THAT THE EMPLOYEES OF CERAMETAL CONTINUED AS THE EMPLOYEES OF D.H.I., THE BOARD FINDS THAT THERE WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THE APPLICANT CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF D.H.I. IN THE LIKE BARGAINING UNIT IN THAT BUSINESS.

THE APPLICANT HAS GIVEN NOTICE TO THE RESPONDENT OF ITS DESIRE TO BARGAIN AND THE PARTIES HAVE MET AND NEGOTIATED WITH A VIEW TO ENTERING INTO A COLLECTIVE AGREEMENT. ACCORDINGLY, THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FROM JANUARY 1ST, 1963."

8969-64-C: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. TURN-BELL CONST. LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN THIS CASE THE RESPONDENT FAILED TO FILE A REPLY. THE BOARD DIRECTED THE PARTIES TO MEET, BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AND REPORT THEIR PROGRESS TO THE BOARD ON OR BEFORE THE 5TH DAY OF AUGUST, 1964.



THE APPLICANT HAS REPORTED THAT IT HAS MET WITH THE SUPERINTENDENT ON THE JOB. THE SOLICITOR FOR THE RESPONDENT HAS INFORMED THE BOARD THAT HE CANNOT GET ANY INSTRUCTIONS FROM HIS CLIENT UNTIL THE 17TH OR 18TH OF AUGUST, 1964.

IN ALL THESE CIRCUMSTANCES, AND HAVING REGARD TO THE FACT THAT THIS IS A CONSTRUCTION INDUSTRY CASE, THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE BOARD'S CERTIFICATE DATED JUNE 29TH, 1964.

THE MATTER IS REFERRED TO THE MINISTER."

8972-64-C: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO - CLC (APPLICANT) V. DUNLOP CANADA LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT HAVING WITHDRAWN ITS REQUEST FOR A HEARING OF THIS MATTER, THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE BOARD'S CERTIFICATE DATED JUNE 3RD, 1964.

THE ATTENTION OF THE PARTIES IS DRAWN TO THE FACT THAT THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD PREVENT THE PARTIES FROM CONTINUING TO BARGAIN PENDING THE APPOINTMENT OF A CONCILIATION OFFICER.

THE MATTER IS REFERRED TO THE MINISTER."

INDEXED ENDORSEMENT - REQUEST FOR MODIFICATION OF THE ARBITRATION PROCEDURE  
IN A COLLECTIVE AGREEMENT

9004-64-M: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 786 (APPLICANT) V. NORONT STEEL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED MODIFICATION OF THE ARBITRATION PROCEDURE SET OUT IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT DATED MARCH 31ST, 1964 IN THIS MATTER.

HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT AND THE STATEMENT CONTAINED IN THE LETTER FROM THE RESPONDENT DATED AUGUST 25TH, 1964, THE BOARD IS OF OPINION THAT THE ARBITRATION PROVISIONS CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IS UNSUITABLE AND ACCORDINGLY THE BOARD DIRECTS THAT THE ARBITRATION PROVISION AS CONTAINED IN ARTICLE 23 OF THE COLLECTIVE AGREEMENT BE AMENDED BY SUBSTITUTING THE FOLLOWING FOR ARTICLE 23F OF THE SAID COLLECTIVE AGREEMENT:

ARTICLE 23F THE EMPLOYER AND THE UNION SHALL CHOOSE A

MUTUALLY AGREEABLE ARBITRATOR WHO SHALL HEAR THE ARBITRATION. SHOULD THE EMPLOYER AND THE UNION FAIL WITHIN FIVE (5) DAYS TO AGREE ON AN ARBITRATOR, AN APPLICATION MAY BE MADE BY EITHER THE EMPLOYER OR THE UNION TO THE MINISTER OF LABOUR FOR THE PROVINCE OF ONTARIO REQUESTING HIM TO APPOINT AN ARBITRATOR."

STATISTICAL TABLES FOR AUGUST 1964

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	AUGUST 1964	1ST 5 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	70	354	315
II. DECLARATION TERMINATING BARGAINING RIGHTS	15	45	33
III. DECLARATION OF SUCCESSOR STATUS	-	1	4
IV. CONCILIATION SERVICES	93	526	541
V. DECLARATION THAT STRIKE UNLAWFUL	5	21	22
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	2	5	1
VII. CONSENT TO PROSECUTE	10	42	89
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	30	68	65
IX. MISCELLANEOUS	1	7	4
TOTAL	226	1069	1074

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	AUGUST 1964	1ST 5 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	75	453	441

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	<u>AUGUST 1964</u>	<u>1ST 5 MONTHS OF FISCAL YEAR 1964-65</u>	<u>1963-64</u>
I. CERTIFICATION	65	345	337
II. DECLARATION TERMINATING BARGAINING RIGHTS	18	52	50
III. DECLARATION OF SUCCESSOR STATUS	-	4	5
IV. CONCILIATION SERVICES	78	573	559
V. DECLARATION THAT STRIKE UNLAWFUL	3	17	22
VI. DECLARATION THAT LOCKOUT UNLAWFUL	1	3	-
VII. CONSENT TO PROSECUTE	11	31	71
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	65	61
IX. MISCELLANEOUS	1	8	2
TOTAL	<u>194</u>	<u>1098</u>	<u>1107</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>AUGUST</u> <u>1964</u>	<u>1ST 5 MONTHS</u> <u>1964-65</u>	<u>FISCAL YEAR</u> <u>1963-64</u>	<u>AUGUST</u> <u>1964</u>	<u>1ST 5 MONTHS</u> <u>1964-65</u>	<u>FISCAL YEAR</u> <u>1963-64</u>
I. <u>CERTIFICATION</u>						
GRANTED	48	245	240	1517	8838	7095
DISMISSED	12	67	59	270	3933	1804
WITHDRAWN	5	33	38	680	1855	526
TOTAL	<u>65</u>	<u>345</u>	<u>337</u>	<u>2467</u>	<u>14626</u>	<u>9425</u>
II. <u>TERMINATION OF</u> <u>BARGAINING</u> <u>RIGHTS</u>						
GRANTED	17	37	39	98	344	791
DISMISSED	1	13	19	4	273	466
WITHDRAWN	-	2	1	-	82	9
TOTAL	<u>18</u>	<u>52</u>	<u>59</u>	<u>102</u>	<u>699</u>	<u>1266</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

	AUGUST 1964	NUMBER OF APPLICATIONS	
		1ST 5 MONTHS OF FISCAL YEAR 1964-65	1963-64
III. <u>CONCILIATION SERVICES*</u>			
REFERRED	72	530	524
DISMISSED	2	22	11
WITHDRAWN	4	21	24
TOTAL	<u>78</u>	<u>573</u>	<u>559</u>
IV. <u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
GRANTED	-	8	2
DISMISSED	-	3	3
WITHDRAWN	3	6	17
TOTAL	<u>3</u>	<u>17</u>	<u>22</u>
V. <u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
GRANTED	-	-	-
DISMISSED	-	1	-
WITHDRAWN	1	2	-
TOTAL	<u>1</u>	<u>3</u>	<u>-</u>
VI. <u>CONSENT TO PROSECUTE</u>			
GRANTED	2	4	19
DISMISSED	5	8	5
WITHDRAWN	4	19	47
TOTAL	<u>11</u>	<u>31</u>	<u>71</u>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	AUGUST 1964	1ST 5 MONTHS OF FISCAL YEAR 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	10	10
POST-HEARING VOTE	-	8	27
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	4	8
POST-HEARING VOTE	5	28	26
BALLOTS NOT COUNTED	-	-	1
	<hr/>	<hr/>	<hr/>
TOTAL	6	50	72
	<hr/>	<hr/>	<hr/>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

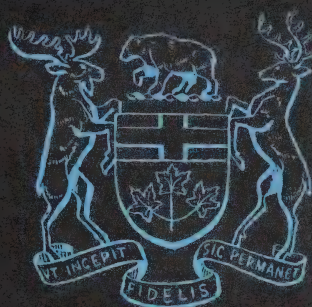
TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	AUGUST 1964	1ST 5 MONTHS OF FISCAL YEAR 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	6
RESPONDENT UNION UNSUCCESSFUL	1	7	17
	<hr/>	<hr/>	<hr/>
	1	7	23
	<hr/>	<hr/>	<hr/>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

SEPTEMBER, 1964



ONTARIO

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ONTARIO LABOUR RELATIONS BOARD





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1964

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

8391-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #1089 (APPLICANT) v. IMPERIAL FOODS (WATFORD) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATFORD, SAVE AND EXCEPT PLANT MANAGER, OFFICE AND SALES STAFF." (103 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE WERE FILED WITH THE BOARD FOUR DOCUMENTS EXPRESSING OPPOSITION TO THIS APPLICATION (HEREINAFTER REFERRED TO AS PETITIONS). THE PETITIONS BEAR THE SIGNATURES OF A SUFFICIENT NUMBER OF EMPLOYEES FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP THAT IF THE BOARD WERE TO FIND THAT THE PETITIONS WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP FOR THOSE EMPLOYEES, THERE WOULD REMAIN UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THESE CIRCUMSTANCES, THE BOARD, FOLLOWING ITS USUAL PRACTICE, WOULD DIRECT THE TAKING OF A REPRESENTATION VOTE TO OBTAIN CONFIRMATORY EVIDENCE OF THE DESIRE OF THE EMPLOYEES TO BE REPRESENTED IN COLLECTIVE BARGAINING BY THE APPLICANT.

ROSS COOPER, WHO IS EMPLOYED BY THE RESPONDENT AS A TRUCK DRIVER, IDENTIFIED THE SIGNATURES APPEARING ON TWO OF THE PETITIONS AND GAVE EVIDENCE IN SUPPORT OF THESE DOCUMENTS. HE TESTIFIED THAT ON FRIDAY, MAY 1ST, 1964 IN THE EARLY AFTERNOON HE WAS APPROACHED BY WILMER SINKEY, ANOTHER EMPLOYEE, ON THE PREMISES OF THE RESPONDENT. SINKEY INFORMED HIM THAT A GROUP OF THE DRIVERS HAD HELD A MEETING AND HAD DECIDED THAT THEY WANTED HIM TO REPRESENT THE DRIVERS WITH A GROUP OF EMPLOYEES WHO WERE GOING TO LONDON THE FOLLOWING MORNING. COOPER IMMEDIATELY AFTER SPEAKING TO SINKEY MET SAMUEL HANDELMAN WHO, AT THE DATE OF THE MAKING OF THE APPLICATION, WAS THE OWNER OF THE RESPONDENT COMPANY. HANDELMAN SAID TO COOPER THAT HE (HANDELMAN) HAD HEARD THAT COOPER HAD BEEN NAMED AS A SPOKESMAN TO GO TO LONDON TO FIGHT THE UNION. COOPER REPLIED THAT HE HAD JUST BEEN INFORMED THAT HE HAD BEEN CHOSEN TO GO TO LONDON. HANDELMAN SUGGESTED THAT COOPER TRAVEL TO LONDON WITH THE ENGINEERS AND TOLD HIM THAT HE (HANDELMAN) KNEW THAT A CAR WAS LEAVING FROM THE PLANT. THE FOLLOWING MORNING, MAY 2ND, COOPER MET WITH A GROUP OF EMPLOYEES OUTSIDE THE PLANT AND DROVE TO LONDON WITH THEM. HE KNEW THAT THEY WERE GOING TO THE OFFICE OF THE SOLICITOR FOR THE COMPANY. THE GROUP OF EMPLOYEES MET IN LONDON WITH SAMUEL LERNER. IRVING HANDELMAN, THE PRESIDENT OF THE RESPONDENT COMPANY, WAS IN MR. LERNER'S OFFICE WHEN THE EMPLOYEES ARRIVED. LERNER INFORMED THE EMPLOYEES THAT HE COULD NOT ACT FOR BOTH THE COMPANY AND THE EMPLOYEES AND SUGGESTED A COUPLE OF OTHER SOLICITORS IN LONDON WHO MIGHT ACT ON THEIR BEHALF. THE EMPLOYEES THEREUPON COMMUNICATED WITH MR. DURDIN BY TELEPHONE AND RETAINED HIM



AS THEIR SOLICITOR. MR. DURDIN ADVISED THE EMPLOYEES HOW TO PREPARE PETITIONS OPPOSING THE APPLICATION AND INSTRUCTED THEM TO BRING THE COMPLETED PETITIONS TO HIS OFFICE ON MONDAY MORNING, MAY 4TH. THE GROUP OF EMPLOYEES THEREUPON RETURNED TO WATFORD ON THE SATURDAY MORNING.

UPON RETURNING TO WATFORD, COOPER TESTIFIED THAT HE WENT INTO THE PLANT AT APPROXIMATELY 1:00P.M. WHILE THERE HE ENCOUNTERED ROSIE WILLER, ANOTHER EMPLOYEE, AND ASKED HER TO ASSIST IN THE PREPARATION AND CIRCULATION OF THE PETITIONS OPPOSING THE UNION. SHE PROCEEDED TO HER HOME AND COOPER JOINED HER THERE SHORTLY THEREAFTER. WHILE THE TWO OF THEM WERE AT HER HOME MRS. WILLER WROTE THE HEADING ON TWO OF THE PETITIONS. COOPER THEN MET WITH SOME EMPLOYEES AT APPROXIMATELY 3:00P.M. IN THE ALVINSTON HOTEL. HIS EVIDENCE IS THAT HE DREW UP THE TWO PETITIONS WHICH HE IDENTIFIED IN THE DINING ROOM OF THE HOTEL. THOSE EMPLOYEES PRESENT THEREUPON SIGNED ONE OF THE PETITIONS. HE SECURED THE REMAINING SIGNATURES AT THE HOMES OF THE EMPLOYEES OR OFF THE PLANT PREMISES. NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN THE PETITIONS WERE PREPARED OR THE SIGNATURES SECURED. ON MONDAY MORNING, MAY 4TH, HE, ROSIE WILLER AND RAY WEEDMARK, ANOTHER EMPLOYEE, DROVE BY CAR TO THE OFFICE OF MR. DURDIN IN LONDON AND GAVE HIM THE PETITIONS.

ROSIE WILLER IDENTIFIED THE TWO REMAINING PETITIONS AND THE SIGNATURES APPEARING ON THEM. MRS. WILLER TESTIFIED THAT SHE HAD BEEN WORKING AT THE PLANT ON SATURDAY MORNING, MAY 2ND. AFTER FINISHING WORK AT NOON SHE HAD GONE HOME BUT RETURNED TO THE PLANT TO PICK UP SOME CLOTHES. WHILE SHE WAS BACK AT THE PLANT SHE ENCOUNTERED COOPER AT APPROXIMATELY 1:00 P.M. COOPER GAVE HER THE WORDING FOR THE HEADINGS ON THE PETITIONS AND SHE PREPARED THE DOCUMENTS WHILE SHE WAS AT THE PLANT. THREE OTHER EMPLOYEES INCLUDING COOPER WERE PRESENT WHEN SHE DREW UP THE PETITIONS. HER EVIDENCE IS THAT SHE DID NOT KNOW THAT COOPER HAD GONE TO LONDON THAT MORNING. SHE SECURED SOME OF THE SIGNATURES ON THE PETITIONS AT THE HOMES OF THE EMPLOYEES AND THE REMAINDER ON MONDAY MORNING, MAY 4TH, BEFORE THE COMMENCEMENT OF WORK AT 8:00 A.M. AS THE EMPLOYEES CAME TO THE PLANT. SHE THEN INFORMED MR. MCBAIN, THE PLANT MANAGER, THAT SHE WOULD NOT BE AT WORK THAT DAY. AT APPROXIMATELY 9:00 A.M. ON THE SAME MORNING SHE DROVE TO LONDON WITH COOPER AND WEEDMARK TO DELIVER THE PETITIONS TO MR. DURDIN.

WE DO NOT ACCEPT MRS. WILLER'S TESTIMONY THAT SHE DID NOT KNOW THAT COOPER HAD GONE TO LONDON ON THE SATURDAY MORNING. COOPER'S EVIDENCE IS THAT HE WENT INTO THE PLANT SHORTLY AFTER RETURNING FROM LONDON AND ENLISTED MRS. WILLER'S ASSISTANCE IN THE PREPARATION OF THE PETITIONS. MRS. WILLER STATED THAT HE PROVIDED HER WITH THE WORDING FOR THE PETITIONS. WE FIND IT IMPOSSIBLE TO BELIEVE, IN THOSE CIRCUMSTANCES, THAT COOPER DID NOT INFORM HER OF THE ACTIVITIES OF THE GROUP OF EMPLOYEES IN LONDON. HAVING REGARD TO ALL HER TESTIMONY, INCLUDING THE DISCREPANCIES BETWEEN HER EVIDENCE AND THAT OF COOPER WITH RESPECT TO WHERE SHE DREW UP THE PETITIONS, WE ARE PREPARED TO GIVE LITTLE WEIGHT TO HER TESTIMONY. IN PARTICULAR, WE DO NOT ACCEPT HER STATEMENT THAT SHE DID NOT TELL MR. MCBAIN, THE PLANT MANAGER, HER REASON FOR BEING ABSENT FROM WORK ON MONDAY, MAY 4TH.

IT IS CLEAR FROM COOPER'S EVIDENCE RELATING TO HIS CONVERSATION WITH SAMUEL HANDELMAN AND THE PRESENCE OF IRVING HANDELMAN IN THE OFFICE OF MR. LERNER THAT MANAGEMENT WAS FAMILIAR WITH THE ACTIVITIES OF THE EMPLOYEES. IT IS ALSO APPARENT THAT A MEETING OR MEETINGS OR SOME ARRANGEMENTS WERE MADE FOR THE GROUP OF EMPLOYEES TO ATTEND AT MR. LERNER'S OFFICE ON THE SATURDAY MORNING. NEITHER COOPER NOR MRS. WILLER, HOWEVER, WHO WERE THE ONLY WITNESSES WHO APPEARED IN SUPPORT OF THE PETITIONS, WERE ABLE TO GIVE THE BOARD ANY INFORMATION WITH REGARD TO THESE ARRANGEMENTS. HAVING REGARD TO THE LACK OF EVIDENCE RELATING TO THEIR ORIGINATION, THE BOARD FINDS THAT THE PETITIONS DO NOT WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. WE WOULD ADD THAT IN THE PRESENT SITUATION WHERE A GROUP OF EMPLOYEES GO TO THE COMPANY'S SOLICITOR AND THE PRESIDENT OF THE COMPANY IS ALSO IN ATTENDANCE, THE LACK OF ANY EVIDENCE AS TO HOW THESE CIRCUMSTANCES CAME ABOUT LEAVES A STRONG INFERENCE THAT THE COMPANY PLAYED AN ACTIVE ROLE IN THE ORIGINATION OF THE PETITIONS."

8686-64-R: ORANGEVILLE ELECTRICAL APPLIANCE WORKERS UNION LOCAL 1614, CANADIAN LABOUR CONGRESS (APPLICANT). V. FILTRO ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (67 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE BOARD'S DECISION IN THE FILTRO ELECTRIC LIMITED CASE, BOARD FILE NO. 8092-63-R.)

(SEE INDEXED ENDORSEMENT PAGE 281 ).

8708-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. NEW TEMISKAMING HOTEL LIMITED, OPERATING AS HOTEL HAILEYBURY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOTEL HAILEYBURY IN HAILEYBURY, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

8749-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. CONCORD TAVERN (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS CONCORD TAVERN IN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK." (22 EMPLOYEES IN THE UNIT).

8750-64-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION - A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. CONCORD TAVERN (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CONCORD TAVERN IN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, HOSTESS, CHEF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED IN THE COCKTAIL BARS AND BEVERAGE ROOMS." (29 EMPLOYEES IN THE UNIT).

8810-64-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WILLIAM MILNE & SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS SAWMILL AND PLANING MILL OPERATIONS IN THE TOWNSHIP OF STRATHY AND INCLUDING THE LINK LAKE OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, AND OFFICE AND SALES STAFF." (87 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE RIVER DRIVING OPERATIONS OF THE RESPONDENT ARE CONTRACTED OUT AND ARE NOT COVERED BY THE FOREGOING DESCRIPTION OF THE BARGAINING UNIT.

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT NAMED EMPLOYEES DESCRIBED AS FILING ROOM FOREMAN, GARAGE FOREMAN, BOILER ROOM FOREMAN AND PRODUCTION CONTROLLER-GRADER ARE EXCLUDED FROM THE BARGAINING UNIT AND THAT A NAMED EMPLOYEE DESCRIBED AS ESTIMATOR IS INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT TWO NAMED EMPLOYEES EMPLOYED AS GRADER-SHIPPERS AND NAMED EMPLOYEES EMPLOYED AS KILN GRADER AND RE-MANUFACTURING PLANT GRADER ARE INCLUDED IN THE BARGAINING UNIT."

8811-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN ELECTRIC BOX AND STAMPINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (191 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES.)

(SEE INDEXED ENDORSEMENT PAGE 284).

8911-64-R: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GORE BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

THE BOARD DECLARED THAT TWO NAMED EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT; THAT A NAMED EMPLOYEE AND A NAMED MEMBER OF THE SALES STAFF ARE EXCLUDED FROM THE BARGAINING UNIT, AND THAT A NAMED EMPLOYEE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS THEREFOR INCLUDED IN THE BARGAINING UNIT.

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE EXCLUDED HARRY WRIGHT FROM THE BARGAINING UNIT BECAUSE OF HIS MANAGERIAL DUTIES AND RESPONSIBILITIES, AND THE FACT THAT HE IS THE ONLY PERSON DESIGNATED AS FOREMAN."



8995-64-R: GENERAL TRUCK DRIVERS, LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. WOOD ALEXANDER LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT DEPARTMENT MANAGERS AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, CHIEF ACCOUNTANT, ONE SECRETARY TO EACH OF THE FOLLOWING:- OFFICE MANAGER, SECRETARY-TREASURER, VICE-PRESIDENT AND GENERAL MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (45 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD DECLARES THAT A NAMED EMPLOYEE IS INCLUDED IN THE BARGAINING UNIT; THAT DESK SALESMEN AND SALES RECORD CLERKS ARE INCLUDED IN THE BARGAINING UNIT; AND THAT SALES ANALYSIS CLERKS ARE INCLUDED IN THE BARGAINING UNIT.

9028-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VAN'S MOVING & CARTAGE (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 200, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 287).

9133-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. PARAMOUNT SERVICE STORES LTD. (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT 97 LAMBTON AVENUE, TORONTO." (2 EMPLOYEES IN THE UNIT).

9141-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE MUFFLER CORPORATION OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (68 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9145-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDERS' INTERNATIONAL UNION A.F.L. C.I.O. C.L.C. (APPLICANT) V. LESLIE QUEEN HOTEL LTD. (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS DUKE OF YORK PUBLIC HOUSE IN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (14 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).



9146-64-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. WHITMORE PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED BY THE RESPONDENT AT ITS WHITMORE PUBLIC HOUSE AT HAMILTON, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

9147-64-R: FOOD HANDLER'S LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EXCLUSIONS FROM THE CLASS OF PERSONS FOR WHOM THE APPLICANT IS RECOGNIZED AS BARGAINING AGENT IN A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT).

9149-64-R: BUILDING SERVICE EMPLOYEES' INT'L UNION, LOCAL 183 A.F. OF L-C.I.O., C.L.C. (APPLICANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

UNIT No. 1:

"ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

UNIT No. 2:

"ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK EMPLOYED AT OR WORKING OUT OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (30 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9150-64-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL. CIO. CLC. LOCAL #440 (APPLICANT) V. NIAGARA BRONZE (DIVISION OF BRASS & METAL SERVICE LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

9152-64-R: RALPH MILROD METAL PRODUCTS EMPLOYEES' ASSOCIATION (APPLICANT) V. RALPH MILROD METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (38 EMPLOYEES IN THE UNIT).

9153-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MUIRHEAD AND BROWN CARTAGE LIMITED, CARRYING ON BUSINESS AS COMMERCIAL CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (42 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT GENERAL TRUCK DRIVERS' UNION, LOCAL NO. 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

9163-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SARNIA SASH & DOOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA AND FOREST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

9194-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2914, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. BATHURST CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 70 QUEEN ELIZABETH BLVD. IN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9196-64-R: INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O. C.L.C. (APPLICANT) V. THE MCARTHUR CHEMICAL COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF NORTH YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9213-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. PADDY'S TAVERN LIMITED CARRYING ON BUSINESS AS THE WESTDALE HOTEL (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

9232-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 ( APPLICANT ) V. A & W DRIVE-IN SIMCOE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9242-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) V. LAFOREST ELECTRIC (SUDBURY) LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT THE CITY OF SUDBURY AND WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9244-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. -- C.I.O.--C.L.C. (APPLICANT) V. THE HAMILTON COTTON COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND SECURITY GUARDS." (15 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9245-64-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ALLIED CHEMICAL CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MOORE, IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT OFFICE STAFF, CHIEF CHEMIST, CHIEF ENGINEER, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (19 EMPLOYEES IN THE UNIT).

ON SEPTEMBER 30, 1964 THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AS SET OUT IN THE LETTER FROM THE RESPONDENT DATED SEPTEMBER 22, 1964, REQUESTING THAT THE CERTIFICATE BE AMENDED TO LIMIT THE BARGAINING UNIT TO THE CORUNNA PLANT OF THE RESPONDENT AND THE LETTER FROM THE APPLICANT DATED SEPTEMBER 25, 1964.

"WE ARE OF OPINION THAT THERE IS NOTHING IN THE LETTER FROM THE RESPONDENT DATED SEPTEMBER 22, 1964, WHICH WOULD CAUSE THE BOARD TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED SEPTEMBER 15, 1964, IN THIS MATTER."

ON SEPTEMBER 30, 1964 BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE AMENDED THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN THIS MATTER AND WOULD HAVE RESTRICTED THE BARGAINING UNIT TO THE CORUNNA PLANT OF THE RESPONDENT, IN MOORE TOWNSHIP IN THE COUNTY OF LAMBTON."



9246-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AIR SHADE ALUMINUM PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NORTH FREDRICKSBURGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

9252-64-R: CORNWALL GENERAL WORKERS' UNION, LOCAL 1617, C.L.C. (APPLICANT) V. DOMINION TAPE OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

9259-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. BRUNO ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

9260-64-R: ST. CATHARINES TYPOGRAPHICAL UNION NO. 416 (APPLICANT) V. THE MANNING PRESS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT PERFORMING COMPOSING ROOM, PRESS ROOM, MAILING ROOM AND BINDERY WORK AT ST. CATHARINES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9261-64-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) V. SMITH & ELSTON CO. LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS, SHEET METAL APPRENTICES AND HELPERS IN TRAINING OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF SAULT STE. MARIE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9277-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 595 BRANTFORD, ONTARIO (APPLICANT) V. ROBERTSON-YATES CORP. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

9279-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. BURROUGHS BUSINESS MACHINES LTD. (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (94 EMPLOYEES IN THE UNIT)

(AGREEMENT OF THE PARTIES).

9280-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. GOODIS ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9289-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. YORK CENTRAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

9305-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. O.B. DODD CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9307-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INTERNATIONAL PARTS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

9308-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL NO. 183 (APPLICANT) V. HUNT BROS. PETERBOROUGH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WORKING AT OR OUT OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE STAFF." (32 EMPLOYEES IN THE UNIT).

9312-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. MACK TRUCKS MANUFACTURING COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (30 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THAT THERE IS AT PRESENT A COLLECTIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SERVICE BRANCH OF THE RESPONDENT."

9313-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. INDUSTRIAL LATHING & PLASTERING CO. (RESPONDENT) V. WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9314-64-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) V. PHILIPPE GIGUERE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

9316-64-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOANISSE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS STORES IN EASTVIEW AND OTTAWA, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9317-64-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. GALT WOOD HEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT ASSISTANT FOREMEN, THOSE ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

9318-64-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOHN ROTAR LIMITED, (JACK'S I.G.A.) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

8319-64-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2537 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DOMTAR NEWSPRINT LIMITED - WOODLANDS DIVISION SULTAN SUB-DIVISION (RESPONDENT).

UNIT: "ALL SCALERS AND ASSISTANT SCALERS EMPLOYED BY THE RESPONDENT AT ITS SULTAN SUB-DIVISION, SAVE AND EXCEPT CHIEF OR CHECK SCALERS AND PERSONS ABOVE THE RANK OF CHIEF OR CHECK SCALER." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9321-64-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. LOCAL #28 (APPLICANT) V. RONALD HASTINGS Co. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

9327-64-R: CHATHAM WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHN VAN MINNEN (RESPONDENT).

UNIT "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE FACT THAT THE BOARD HAS FOUND THE CHRISTIAN LABOUR ASSOCIATION OF CANADA TO BE A TRADE UNION AS DEFINED BY SECTION 90(B) OF THE LABOUR RELATIONS ACT, (SEE CORNELIS VANDER STELT, O.L.R.B. MONTHLY REPORT, MAY, 1964, P.87), AND TAKING INTO CONSIDERATION THE CONSTITUTION OF THE APPLICANT AND ITS COLLECTIVE BARGAINING HISTORY, THE BOARD FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT WITH RESPECT TO THE FINDING OF THE MAJORITY THAT THE APPLICANT IS A TRADE UNION AS DEFINED BY SECTION 90(B) OF THE LABOUR RELATIONS ACT, IN MY VIEW, IN SO FAR AS THE APPLICANT IS CONCERNED THERE IS NO INTERNAL ORGANIZATIONAL STRUCTURE WHICH WOULD SUGGEST THAT THE APPLICANT UNION IS ONE PERTAINING TO THE CONSTRUCTION INDUSTRY AS THAT TERM IS USED IN THE ACT. WHILE I WOULD CERTIFY THE APPLICANT I WOULD NOT DO SO UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT."

9334-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. DONALDSON-BARRON LIMITED (RESPONDENT) V. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (INTERVENER).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9344-64-R: LODGE No. 1710, INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. WEST COAST WIRE WORKS LTD. (LAKEHEAD DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT)

9346-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. DORAL HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT IT HAS NO EVIDENCE WHATEVER FROM ITS EMPLOYEES THAT ANY OF THEM WISH TO HAVE THE APPLICANT REPRESENT THEM. THIS IS VERY SIMILAR IN NATURE TO THE REASONS ADVANCED IN SUPPORT OF A HEARING IN THE FOUNDATION COMPANY OF CANADA LIMITED CASE, O. L.R.B. MONTHLY REPORT, MARCH, 1963, PP. 503 AND 532, AND IN ALCAN COLONY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1963, P. 159. IN BOTH CASES A HEARING WAS DENIED. AS IS NOTED IN BOTH DECISIONS, THE QUESTION IS A MATTER FOR THE DISCRETION OF THE BOARD UNDER SECTION 75(9A) OF THE LABOUR RELATIONS ACT. THE ONLY DIFFERENCE BETWEEN THIS CASE AND THE TWO REFERRED TO ABOVE IS THAT IN THIS CASE THE RESPONDENT HAS FAILED TO FILE SPECIMEN SIGNATURES FOR HIS EMPLOYEES AS REQUIRED BY THE BOARD. THIS, HOWEVER, IS A MATTER FOR THE RESPONDENT, AND IT SURELY CANNOT COMPLAIN IF IT HAS FAILED TO COMPLY WITH A DIRECTION OF THE BOARD WHICH SERVES TO PROTECT THE EMPLOYER.

HAVING REGARD TO THE REASONS GIVEN IN THE FOUNDATION AND ALCAN-COLONY CASES (SUPRA), AND TO ALL THE CIRCUMSTANCES OF THIS CASE, WE SEE NO REASON FOR DIRECTING A HEARING. AS WAS POINTED OUT IN THE OTHER CASES, IF THE BOARD HAS ERRED IN SOME MATERIAL WAY, A PARTY HAS THE RIGHT TO ASK THE BOARD TO RECONSIDER ITS DECISION UNDER SECTION 79(1) OF THE ACT."

9347-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. THE CANADIAN KELLOGG COMPANY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).



9348-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. DRAVI CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9349-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. FALCO ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (76 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9352-64-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. WATERLOO METAL STAMPINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND OFFICE STAFF."  
(59 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN ORALLY AT THE HEARING AND IN VIEW OF THE CIRCUMSTANCES SURROUNDING THE CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF THE OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO INQUIRE INTO THE CHARGES MADE BY THE APPLICANT IN CONNECTION WITH THE DOCUMENTS OR TO SEEK THE CONFIRMED EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. I WOULD BE PREPARED TO HOLD THAT THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE."

9354-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 940 (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN KENORA."  
(4 EMPLOYEES IN THE UNIT).

9366-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #1036 (APPLICANT) V. RULLIFF GRASS CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9368-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MARPO SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9369-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOHN MAGUIRE CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9375-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. B.K. JOHL INCORPORATED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

9376-64-R: LOCAL 721, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. G & H STEEL SERVICE OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZIVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE AREA PROPOSED BY THE APPLICANT IN THIS CASE DIFFERS FROM THE AREA WHICH HAS ALREADY BEEN SET BY THE BOARD IN AN EARLIER CASE. THE BOARD PROPOSES TO FOLLOW THE ESTABLISHED PATTERN."

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

9107-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. PARMENTER & BULLOCH, DIVISION OF TEXTRON CANADA LIMITED (RESPONDENT) V. PARMENTER & BULLOCH EMPLOYEES' ASSOCIATION No. 183, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GANANOQUE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (101 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	98
NUMBER OF BALLOTS CAST	100
NUMBER OF BALLOTS SEGREGATED	
AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	59
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	38

9134-64-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) V. HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ON ITS MAINTENANCE STAFF AT ITS HUMBER HOSPITAL AT WESTON, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF OPERATING ENGINEERS AND HUMBER MEMORIAL HOSPITAL ASSOCIATION EFFECTIVE FROM MARCH 23RD, 1964." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	5
NUMBER OF BALLOTS CAST	5



NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	0

9193-64-R: INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O. C.L.C. (APPLICANT)  
V. THAYER PERFUMER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN AND OFFICE STAFF." (28 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST		28
NUMBER OF BALLOTS CAST		28
NUMBER OF OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED		
AGAINST APPLICANT	6	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

7834-63-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. GREB INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BREITHAUP STREET PLANT IN KITCHENER, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT FORELADIES, AND PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD." (206 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		206
NUMBER OF BALLOTS CAST		203
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	116	
NUMBER OF BALLOTS MARKED		
AGAINST APPLICANT	87	

8712-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HAMILTON PUBLIC LIBRARY BOARD (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL LIBRARIANS AND PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT." (64 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT  
LIBRARIAN ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT."

(AGREEMENT OF THE PARTIES).



NUMBER OF NAMES ON REVISED	
VOTERS' LIST	59
NUMBER OF BALLOTS CAST	58
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	44
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	14

8836-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INTER CITY BAKING COMPANY LIMITED (BROWNS' BREAD DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	17
NUMBER OF BALLOTS CAST	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	8

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE WAS FILED WITH THE BOARD A HANDWRITTEN STATEMENT OF DESIRE DATED JULY 11TH, 1964, SIGNED BY A PERSON PURPORTING TO BE AN EMPLOYEE OF THE RESPONDENT, WHICH ENCLOSED AN UNDATED TYPEWRITTEN STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE 'PETITION') SIGNED BY 18 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. VICTOR WARWICK, AN EMPLOYEE OF THE RESPONDENT, GAVE EVIDENCE WITH RESPECT TO THE PETITION. THE WITNESS WAS ABLE TO IDENTIFY TO THE BOARD'S SATISFACTION THE FIRST 12 SIGNATURES ON THE PETITION. WITH RESPECT TO THE REMAINING SIGNATURES, THE EVIDENCE OF THE WITNESS WAS CONFUSED AND IN ONE OR TWO INSTANCES CONTRADICTORY. WITH RESPECT ONLY TO THE FIRST 12 SIGNATURES ON THE PETITION THE BOARD IS NOT PREPARED TO ACCEPT THE CONTENTION OF THE APPLICANT THAT THE PETITION DOES NOT REPRESENT A TRUE EXPRESSION OF THE WISHES OF THESE EMPLOYEES."

BOARD MEMBER D.M. STOREY DISSENTED AND SAID:-

"I DISSENT. I WOULD NOT HAVE GIVEN ANY WEIGHT TO THE PETITION FOR THE FOLLOWING REASONS:

WE HAVE NO ASSURANCE AS TO WHAT HAPPENED TO THE PETITION AFTER IT LEFT THE HANDS OF THE WITNESS, WARWICK, AFTER THE TWELFTH SIGNATURE WAS OBTAINED. IN ANY EVENT, THE EVIDENCE OF THE WITNESS WAS OF SUCH A NATURE AS TO INVALIDATE THE WHOLE PETITION. I WOULD HAVE CERTIFIED THE APPLICANT."

8978-64-R: SHIPMENS LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS: (AFFILIATED WITH THE AFL-CIO, C.L.C.) (APPLICANT) V. SEAWAY PLATE AND STRUCTURAL STEEL LTD. (RESPONDENT) V. UNITED

ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 666 (INTERVENER) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (19 EMPLOYEES IN THE UNIT).

NUMBER ON REVISED VOTERS' LIST	20
NUMBER OF BALLOTS CAST	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF UNITED STEELWORKERS OF AMERICA	7

9049-64-R: BOOT AND SHOE WORKERS' UNION, AFFILIATED WITH A.F. OF L. - C.I.O.-C.L.C. (APPLICANT) V. SKIPPY FOOTWEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELMIRA, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (53 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	49
NUMBER OF BALLOTS CAST	50
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

##### NO VOTE CONDUCTED

8251-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GENERAL WIRE AND CABLE COMPANY LIMITED (RESPONDENT) V. INDEPENDENT WIRE & CABLE WORKERS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT COBOURG SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (218 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 279 ).

8994-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 938 GENERAL TRUCK DRIVERS (APPLICANT) V. TRANS-PROVINCIAL FREIGHT CARRIERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE NUMBER OF EMPLOYEES WHO HAVE SOME DEGREE OF INTER-CHANGE IN THEIR JOB FUNCTIONS BETWEEN THE OPERATING AND MAINTENANCE DEPARTMENTS OF THE RESPONDENT'S BUSINESS.)

9115-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A CRAFT UNIT COMPOSED OF "ALL STATIONARY ENGINEERS" OF THE RESPONDENT AT ITS HOSPITAL AT KINGSTON. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE APPLICANT IS A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT WITHIN THE MEANING OF SECTION 6(2) OF THE LABOUR RELATIONS ACT.

THE BOARD ACCORDINGLY FINDS THAT THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT IS NOT APPROPRIATE TO BE REPRESENTED BY THE APPLICANT AND THIS APPLICATION IS THEREFORE DISMISSED."

9205-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 940 (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT, THE APPLICATION IS THEREFORE DISMISSED."

9243-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1758, BROCKVILLE (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING AN AREA CONSISTING OF PORTIONS OF THE COUNTIES OF LEEDS AND DUNDAS AND THE WHOLE OF THE COUNTY OF GRENVILLE. THE JOB SITE AFFECTED BY THE APPLICATION IS SITUATED AT CARDINAL IN THE TOWNSHIP OF EDWARDSBURGH IN THE COUNTY OF GRENVILLE. ON SEPTEMBER THE 8TH, 1960, THE BOARD CERTIFIED THE APPLICANT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE PRESENT RESPONDENT IN THE TOWNSHIPS OF EDWARDSBURGH AND AUGUSTA (BOTH IN THE COUNTY OF GRENVILLE). THE RESPONDENT HAS INFORMED THE BOARD THAT A COLLECTIVE AGREEMENT WAS SUBSEQUENTLY ENTERED INTO COVERING THIS AREA AND THAT THE PARTIES HAVE HAD SOME NEGOTIATIONS TOWARDS THE RENEWAL OF THIS SAME COLLECTIVE AGREEMENT. ONE OF THE ISSUES AT STAKE APPEARS TO BE THE WIDER AREA SOUGHT BY THE APPLICANT IN THE PRESENT CASE.

SINCE THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING ON A JOB SITE COVERED BY THE PRIOR CERTIFICATION AND COLLECTIVE AGREEMENT, THE APPLICANT ALREADY HAS BARGAINING RIGHTS FOR THESE EMPLOYEES AND CANNOT, IN OUR VIEW, SEEK TO ENLARGE ON THOSE BARGAINING RIGHTS IN THE PRESENT APPLICATION, PARTICULARLY WHERE THERE ARE NO EMPLOYEES IN THE NEW AREA INVOLVED. IN THE RESULT, THEREFORE, THE APPLICATION MUST BE DISMISSED.

WE WOULD POINT OUT THAT, IN ANY EVENT, THE APPLICANT WHICH DID NOT REQUEST AT HEARING, HAS FILED NO EVIDENCE WITH THE BOARD



SUBSTANTIATING ITS CLAIM TO THE WIDER AREA.

THE APPLICATION IS DISMISSED."

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8378-64-R: INTERNATIONAL CHEMICAL WORKERS UNION, A.F. OF L.-C.I.O.-C.L.C.  
(APPLICANT) V. CANADA DUPHAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CITY OF LONDON AND TOWNSHIP OF WESTMINSTER SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, LABORATORY PERSONNEL, OFFICE AND SALES STAFFS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	26
NUMBER OF BALLOTS CAST	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

8957-64-R: SIMCOE OFFICE EMPLOYEES UNION, LOCAL 1616, C.L.C. (APPLICANT) V. AMERICAN CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, NURSING STAFF, ONE SECRETARY TO THE PLANT MANAGER, PERSONNEL CLERK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CAN WORKERS FEDERAL UNION LOCAL 535." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	17
NUMBER OF BALLOTS CAST	18
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE LIST FILED BY THE RESPONDENT CONTAINS THE NAMES OF 16 PERSONS ALL OF WHOM THE BOARD FINDS TO BE MEMBERS OF THE BARGAINING UNIT DETERMINED IN PARAGRAPH 2 FOR THE PURPOSES OF THE COUNT. IN SUPPORT OF ITS APPLICATION, THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR 12 PERSONS WHO ARE MEMBERS OF THE BARGAINING UNIT. THERE WERE ALSO FILED WITH THE BOARD TWO DOCUMENTS EXPRESSING OPPOSITION TO THIS APPLICATION (HEREINAFTER REFERRED TO AS "PETITIONS") WHICH BEAR THE SIGNATURES OF 9 PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT.

JOHN POTTS WHO PREPARED AND CIRCULATED ONE OF THE TWO PETI-



TIONS TESTIFIED THAT THE DAY AFTER HE HAD BEEN ASKED TO JOIN THE UNION HE WENT TO THE OFFICE OF D.R. WALKER THE PERSONNEL MANAGER AND ASKED HIM WHAT WOULD HAPPEN TO HIS ANNUITY IF THE APPLICANT WERE CERTIFIED FOR THE OFFICE EMPLOYEES. WALKER REPLIED THAT HE COULD NOT SAY DEFINITELY WHAT WOULD HAPPEN IF THE UNION WERE SUCCESSFUL IN ITS APPLICATION. HE DID SAY, HOWEVER, IN RESPONSE TO POTTS' INQUIRY, THAT IN OTHER LOCATIONS WHERE THE OFFICE EMPLOYEES OF THE RESPONDENT WERE REPRESENTED BY A UNION, THE ANNUITY PROGRAM WAS REPLACED BY A PENSION PLAN. UPON THE REQUEST OF POTTS, WALKER MADE A COMPARISON OF THE VALUE OF POTTS' ANNUITY WITH THE EQUIVALENT VALUE OF A PENSION UNDER THE PENSION PLAN COVERING THE PLANT EMPLOYEES OF THE RESPONDENT. POTTS ALSO APPROACHED WALKER AFTER THE BOARD'S NOTICE TO THE EMPLOYEES OF THE APPLICATION FOR CERTIFICATION WAS POSTED. POTTS ASKED WALKER HOW TO GO ABOUT ORGANIZING A PETITION REFERRED TO IN THE NOTICE. WALKER ADVISED HIM TO FOLLOW THE INSTRUCTION APPEARING IN THE NOTICE.

HAROLD MATTICE, WHO ASSISTED IN THE CIRCULATION OF ONE OF THE PETITIONS AND MAILED BOTH OF THEM TO THE BOARD, TESTIFIED THAT HE ALSO WENT TO WALKER'S OFFICE THE DAY AFTER HE WAS APPROACHED TO JOIN THE UNION. HE ASKED WALKER FOR CLARIFICATION OF THE TERMINATION PROVISION IN THE ANNUITY PLAN. WALKER TOLD HIM TO STUDY THE RELEVANT PROVISION IN A BOOKLET WHICH OUTLINED THE PLAN. LATER THE SAME DAY MATTICE ALSO APPROACHED MORFIN THE PLANT ACCOUNTANT AND ASKED HIM WHAT THE SITUATION WITH RESPECT TO HIS ANNUITY WOULD BE IF HE JOINED THE UNION. MATTICE'S EVIDENCE RELATING TO THE STATEMENTS MADE BY MORFIN IN REPLY IS NOT ENTIRELY CLEAR. HE DID TESTIFY, HOWEVER, THAT MORFIN SAID THAT HE (MATTICE) WOULD HAVE TO START ALL OVER AGAIN IF THE GROUP ANNUITY WERE TERMINATED FOR ANY REASON.

THE EVIDENCE OF ROBERT NUNN PREPARED AND CIRCULATED A SECOND PETITION IS THAT HE ASKED MORFIN IF THE BOARD'S NOTICE TO THE EMPLOYEES OF THE APPLICATION FOR CERTIFICATION MEANT THAT HE COULD SECURE SIGNATURES OF EMPLOYEES OUTSIDE THE PLANT PREMISES. MORFIN HAD REPLIED IN THE AFFIRMATIVE.

ON THE ABOVE EVIDENCE OF THE EMPLOYEES WHO APPEARED IN SUPPORT OF THE PETITIONS WE DO NOT FIND THAT THE RESPONDENT PARTICIPATED OR ASSISTED IN THEIR PREPARATION OR CIRCULATION.

THE APPLICANT, HOWEVER, ALLEGES THAT THE CONDUCT OF WALKER AND MORFIN WITH RESPECT TO THREE OTHER EMPLOYEES CONSTITUTED A THREAT TO THEM AND THAT ACCORDINGLY NO WEIGHT SHOULD BE GIVEN TO THE PETITIONS.

THOMAS LESLIE TESTIFIED THAT ON JULY 16TH WALKER CAME INTO HIS OFFICE AND MADE STATEMENTS TO THE EFFECT THAT HE KNEW THAT THE UNION WAS TRYING TO ORGANIZE THE OFFICE STAFF AND THAT HE HAD HEARD THAT LESLIE HAD BEEN ASKED TO JOIN. DURING THE CONVERSATION WALKER REFERRED TO THE COMPANY'S ANNUITY PLAN AND ASKED LESLIE IF HE REALIZED THAT THE MOMENT THE PLAN WAS TERMINATED HE WOULD GO INTO ANOTHER GROUP. WALKER INDICATED THAT THE ANNUITY WOULD PROBABLY BE TERMINATED IF THE UNION WERE CERTIFIED BECAUSE THE OFFICE WOULD BE LEAVING THE GROUP.

THE EVIDENCE OF SHIRLEY MOORE IS THAT THE MORNING AFTER SHE HAD BEEN APPROACHED TO JOIN THE UNION SHE HAD BEEN IN MORFIN'S OFFICE ON BUSINESS. WHILE SHE WAS THERE MORFIN ASKED HER IF SHE HAD BEEN

APPROACHED BY THE UNION TO WHICH SHE REPLIED IN THE AFFIRMATIVE. MORFIN ASKED HER IF SHE REALIZED THAT SHE COULD LOSE HER ANNUITY IF THE UNION CAME INTO THE PLANT. SANDRA WILLITTS ALSO TESTIFIED THAT WHILE IN MORFIN'S OFFICE DELIVERING A TELETYPE, HE ASKED HER IF SHE HAD BEEN APPROACHED TO JOIN THE UNION. MORFIN MADE SOME MENTION OF ANNUITIES BUT SHE COULD NOT REMEMBER THE CONTENT OF HIS REMARKS.

ALTHOUGH, BY THEIR CONVERSATIONS, WALKER AND MORFIN MADE IT APPARENT TO LESLIE AND MOORE THAT THEY DID NOT FAVOUR UNION ORGANIZATION OF THE OFFICE EMPLOYEES, WE DO NOT FIND THAT THEIR CONDUCT CONSTITUTED A THREAT OR SO INFLUENCED THE EMPLOYEES AS TO IMPAIR THEIR ABILITY TO MAKE THEIR OWN DECISIONS. WE ACCORDINGLY ACCEPT THE PETITIONS AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED THEM."

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"WHILE I AGREE WITH THE FACTS AS STATED BY THE MAJORITY OF THE BOARD I CANNOT AGREE THAT THE ACTIONS OF THE PERSONNEL MANAGER WALKER IN HIS CONVERSATION WITH LESLIE OR THE INTERROGATION BY MORFIN OF SHIRLEY MOORE AND SANDRA WILLITTS DO NOT AMOUNT TO INTIMIDATION BY THE COMPANY SUFFICIENT TO MAKE A VOTE OF THE EMPLOYEES USELESS IN THIS SITUATION. ONE HAD ONLY TO WITNESS THE DEMEANOUR OF MATTICE OR THE TWO GIRLS IN THE WITNESS BOX TO REALIZE THE AMOUNT OF COMPANY INTERFERENCE THAT HAD TAKEN PLACE. IN MY OPINION THE COMPANY THROUGH ITS OFFICERS CANNOT BE ALLOWED TO INTERFERE IN THIS MANNER IN THE EMPLOYEES FREE CHOICE OF A UNION, THEN EXPECT THE DAMAGE SO DONE TO BE REPAIRED BY A SO-CALLED FREE VOTE. I WOULD HAVE CERTIFIED WITHOUT A VOTE ON THE EVIDENCE THAT AN OVERWHELMING MAJORITY OF THE EMPLOYEES JOINED THE UNION, PAID A DOLLAR AND ONLY AFTER THE COMPANY INTERFERENCE DID THEY DECIDE TO CHANGE THEIR MINDS."

8979-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)  
V. BOORMAN'S BEVERAGES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	15
NUMBER OF BALLOTS CAST	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

9195-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BIG FOUR EXPRESS LTD. (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 200, N.C.C.L. (INTERVENER). (11 EMPLOYEES).

9267-64-R: THE INTERNATIONAL UNION OF DISTRICT 50, UMWA (APPLICANT) V. THE A.E. STALEY, (CANADA), LIMITED (RESPONDENT). (5 EMPLOYEES).

9295-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254, (AFL-CIO-CLC) (APPLICANT) V. LAKEVIEW DAIRY AND RESTAURANT (RESPONDENT). (34 EMPLOYEES).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING SEPTEMBER

8898-64-R: DOROTHY HALL (APPLICANT) V. WELDERS, PUBLIC GARAGE EMPLOYEES, MOTOR MECHANICS, AND ALLIED WORKERS LOCAL UNION 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT (GRANTED)). (26 EMPLOYEES).

(RE: ISLINGTON CHRYSLER PLYMOUTH (1963) LIMITED,  
TORONTO, ONTARIO).

UNIT: "ALL EMPLOYEES OF ISLINGTON CHRYSLER PLYMOUTH (1963) LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."

NUMBER OF NAMES ON REVISED VOTERS' LIST	23
NUMBER OF BALLOTS CAST	23
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	11
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	12

(SEE INDEXED ENDORSEMENT PAGE 289 ).

9142-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) V. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O., C.L.C. (RESPONDENT)).

9143-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) V. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O., C.L.C. (RESPONDENT)).

(THE ABOVE MATTERS WERE CONSOLIDATED AND AFFECTED 2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT APPLIED ON AUGUST 14, 1964, UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT.



THE RESPONDENT AND ADANAC ORNAMENTAL IRON WORKS LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH TERMINATED ON DECEMBER 31, 1964.

CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND ADANAC ORNAMENTAL IRON WORKS LIMITED ON FEBRUARY 20, 1964, AND SUBSEQUENTLY A CONCILIATION BOARD WAS APPOINTED. ON AUGUST 6, 1964, THE REPORT OF THE BOARD OF CONCILIATION WAS SENT TO THE PARTIES.

SINCE 12 MONTHS HAVE NOT ELAPSED FROM THE DATE OF THE GRANTING OF CONCILIATION SERVICES, AND SINCE IN ANY EVENT 30 DAYS HAVE NOT ELAPSED FOLLOWING THE RELEASE OF THE REPORT OF A CONCILIATION BOARD TO THE PARTIES, THIS APPLICATION IS UNTIMELY UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY DISMISSED."

9154-64-R: NIGEL WYNNE RATSOY (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL #944 (RESPONDENT). (DISMISSED). (4 EMPLOYEES).

(RE: MOGENS HANSEN, DOING BUSINESS AS PRODUCTION PAINTING, WINDSOR, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE HAVING APPEARED TO GIVE EVIDENCE IN SUPPORT OF THIS APPLICATION, THE APPLICATION IS ACCORDINGLY DISMISSED."

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING  
SEPTEMBER

8215-64-M: LOCAL UNION 5048 OF UNITED STEELWORKERS OF AMERICA, (APPLICANT) V. ALGOMA ORE PROPERTIES DIVISION OF THE ALGOMA STEEL CORPORATION, LIMITED (RESPONDENT).

IN THIS APPLICATION, THE BOARD FOUND THAT TWO NAMED PERSONS WERE EMPLOYEES OF THE RESPONDENT AND THAT TWO OTHER NAMED PERSONS WERE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING  
SEPTEMBER

8895-64-U: BARBER DIE CASTING CO. LIMITED (APPLICANT) V. THE UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

8936-64-U BARBER DIE CASTING CO. LIMITED (APPLICANT) V. LOCAL 4153 OF THE UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

9263-64-U: PAULFORD CONSTRUCTION LTD. (APPLICANT) V. SARNIA AND LAMBTON COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL (RESPONDENT). (WITHDRAWN).

9264-64-U: MARENTETTE BROS. LTD. (APPLICANT) V. SARNIA AND LAMBTON COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL (RESPONDENT). (WITHDRAWN).



9283-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 (RESPONDENT) (WITHDRAWN).

9284-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) V. JAS. BROADBRIDGE ET AL (RESPONDENTS). (WITHDRAWN).

9411-64-U: AMILCARE (MIKE) ZANINI, CARRYING ON BUSINESS AS ZANINI AND COMPANY (APPLICANT) V. WILLIAM TYMCHUK ET AL (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING FAILED TO APPEAR AT THE HEARING,  
THIS APPLICATION IS DISMISSED."

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF  
DURING SEPTEMBER

9181-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CENTRAL SUPERMARKETS LIMITED AND IRVING-CHARLES SUPERMARKETS LIMITED AND IRVING TAYLOR AND CHARLES TAYLOR (RESPONDENTS). (WITHDRAWN).

9203-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. ALGER PRESS LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 290 ).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING  
SEPTEMBER

8542-64-U: AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL #47 (APPLICANT) V. PRESS ENGRAVERS LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO  
WITHDRAW ITS APPLICATION HEREIN. HAVING REGARD TO THE  
REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPLICANT'S  
REQUEST, THE BOARD HEREBY TERMINATES THE APPLICATION."

8543-64-U: AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL #47 (APPLICANT) V. PRESS ENGRAVERS LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO  
WITHDRAW ITS APPLICATION HEREIN. HAVING REGARD TO THE  
REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPLICANT'S  
REQUEST, THE BOARD HEREBY TERMINATES THE APPLICATION."

9005-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. J. MAREES (RESPONDENT). (WITHDRAWN).

9006-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MR. JEAN PAUL JOANISSE (RESPONDENT) (WITHDRAWN).

9007-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOANISSE LIMITED, (I.G.A.) (RESPONDENT). (WITHDRAWN).

9064-64-U: INTERCITY TYPESETTING LIMITED (APPLICANT) V. OSHAWA TYPOGRAPHICAL UNION (I.T.U.) LOCAL 969 (RESPONDENT). (GRANTED)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN CONTRAVENTION OF SECTIONS 55 AND 59(1) OF THE LABOUR RELATIONS ACT.

THE BOARD FINDS ON THE EVIDENCE BEFORE IT THAT THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS. THE BOARD IS FURTHER OF THE OPINION THAT THIS IS NOT A CASE IN WHICH, IN THE EXERCISE OF ITS DISCRETION, IT SHOULD DENY THE RELIEF SOUGHT BY THE APPLICANT.

THE BOARD, ACCORDINGLY, CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE ON AND AFTER JUNE 16TH, 1964, IN CONTRAVENTION OF SECTION 55 OF THE LABOUR RELATIONS ACT;
- (2) THAT THE RESPONDENT, WITHOUT THE CONSENT OF THE APPLICANT, ALTERED TERMS OR CONDITIONS OF EMPLOYMENT OR THE DUTIES OF THE EMPLOYEES OF THE APPLICANT IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE APPLICANT HAS FAILED TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS. EVEN ASSUMING, HOWEVER, THAT THE EVIDENCE DID SUPPORT THE ALLEGATIONS, HAVING REGARD TO ALL THE CIRCUMSTANCES, IN THE EXERCISE OF THE BOARD'S DISCRETION, I WOULD HAVE DENIED THE RELIEF SOUGHT BY THE APPLICANT."

9065-64-U: INTERCITY TYPESETTING LIMITED (APPLICANT) V. ALAN HERITAGE (RESPONDENT) (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN CONTRAVENTION OF SECTIONS 55 AND 57(1) OF THE LABOUR RELATIONS ACT.

THE BOARD FINDS ON THE EVIDENCE BEFORE IT THAT THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS. THE BOARD IS FURTHER OF THE OPINION THAT THIS IS NOT A CASE IN WHICH, IN THE EXERCISE OF ITS DISCRETION, IT SHOULD DENY THE RELIEF SOUGHT BY THE APPLICANT.

THE BOARD ACCORDINGLY, CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE RESPONDENT, BEING AN OFFICER, OFFICIAL OR AGENT OF THE RESPONDENT, COUNSELLED, PROCURED, OR ENCOURAGED AN UNLAWFUL STRIKE IN CONTRAVENTION OF SECTION 55 OF THE LABOUR RELATIONS ACT;
- (2) THAT THE RESPONDENT DID AN ACT, AS A PROBABLE AND REASONABLE CONSEQUENCE OF WHICH HE KNEW OR OUGHT TO HAVE KNOWN, ANOTHER PERSON OR PERSONS WOULD ENGAGE IN AN UNLAWFUL STRIKE IN CONTRAVENTION OF SECTION 57(1) OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE APPLICANT HAS FAILED TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS. EVEN ASSUMING, HOWEVER, THAT THE EVIDENCE DID SUPPORT THE ALLEGATIONS, HAVING REGARD TO ALL THE CIRCUMSTANCES, IN THE EXERCISE OF THE BOARD'S DISCRETION, I WOULD HAVE DENIED THE RELIEF SOUGHT BY THE APPLICANT."

9155-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. INTERCITY TYPESETTING LIMITED, ELMER STEWART AND DAVID RUSSELL (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT, INTERCITY TYPESETTING LIMITED, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, IT SOUGHT TO COMPEL PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM TO CEASE TO BE MEMBERS OF A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 51 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, WHILE A TRADE UNION CONTINUED TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT WHICH INCLUDED PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON, THE SAID RESPONDENT DID BARGAIN WITH THE SAID PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM.

THE APPROPRIATE DOCUMENTS WILL ISSUE.

THE APPLICATION AS IT AFFECTS THE RESPONDENTS, ELMER STEWART AND DAVID RUSSELL, STANDS ADJOURNED SINE DIE."

9182-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. CENTRAL SUPERMARKETS LIMITED AND IRVING-CHARLES SUPERMARKETS LIMITED AND IRVING TAYLOR AND CHARLES TAYLOR (RESPONDENTS). (WITHDRAWN).

9265-64-U: MARENTETTE BROS. LTD. (APPLICANT) v. DAVID T. BUTT (RESPONDENT). (WITHDRAWN).

9266-64-U: MARENTETTE BROS. LTD. (APPLICANT) v. BRUCE BLACKWELL (RESPONDENT) (WITHDRAWN).

9285-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 (RESPONDENT). (WITHDRAWN)

9286-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) v. W.E. MURPHY (RESPONDENT). (WITHDRAWN).

9287-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) v. KENNETH McDougall (RESPONDENT). (WITHDRAWN).

9288-64-U: HUME'S TRANSPORT LIMITED (APPLICANT) v. JAMES BROADBRIDGE ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
SEPTEMBER

8459-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) v. CRONIN'S LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS COMPLAINT WAS ORIGINALLY BROUGHT IN RESPECT TO OMAR AUBREY, LUCETTE DUFOUR, IRENE LANGLOIS, BETTY VAN ELLEN, HELEN FOUCAULT (HEREINAFTER CALLED THE AGGRIEVED EMPLOYEES) AND TWO OTHERS, BEATRICE NOEL AND MARILYN LACHANCE. THE COMPLAINT WITH REGARD TO BEATRICE NOEL AND MARILYN LACHANCE WAS WITHDRAWN AT THE HEARING.

WE HAVE CAREFULLY CONSIDERED AND ASSESSED THE WEIGHT TO BE ATTACHED TO THE EVIDENCE PLACED BEFORE US IN THIS CASE. HAVING REGARD TO THE OBJECTIVE FACTS INCLUDING THESE FACTS AGREED TO BY THE PARTIES AND THE REASONABLE INFERENCES WHICH, IN ALL THE CIRCUMSTANCES MUST BE GATHERED THEREFROM, WE ARE CONSTRAINED TO FIND THAT THE RESPONDENT COMPANY ENTERED INTO AN ARRANGEMENT WITH GERALD CRONIN AND TERMINATED THE EMPLOYMENT OF THE AGGRIEVED EMPLOYEES AS PART OF A SCHEME AND STRATAGEM TO FORESTALL AND DEFEAT UNIONIZATION AND TO INTERFERE WITH AND THWART THE RIGHTS OF ITS EMPLOYEES TO CHOOSE COLLECTIVE BARGAINING UNDER THE LABOUR RELATIONS ACT. IN CONSEQUENCE, WE ARE SATISFIED THAT THE ACTIONS OF THE RESPONDENT EMPLOYER IN THIS CASE WERE CONTRARY TO SECTIONS 48 AND 50 (A) OF THE LABOUR RELATIONS ACT.



IT WAS AGREED AT THE HEARING THAT IF THE BOARD FOUND THAT THE RESPONDENT EMPLOYER ACTED CONTRARY TO THE ACT IN DISCHARGING THE EMPLOYEES AND WAS ANSWERABLE TO COMPENSATE THEM FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS, IF ANY, THAT BEFORE CALLING ON THE BOARD TO ASSESS SUCH COMPENSATION, THE PARTIES THEMSELVES WOULD MEET AND ENDEAVOUR TO AGREE TO THE AMOUNT OF COMPENSATION, IF ANY, PAYABLE BY THE RESPONDENT TO EACH OF THE AGGRIEVED EMPLOYEES.

OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (A) THE RESPONDENT SHALL FORTHWITH EMPLOY AND REINSTATE OMAR AUBREY, LUCETTE DUFOUR, IRENE LANGLOIS, BETTY VAN ELLEN AND HELEN FOUCAULT IN THE SAME OR LIKE POSITIONS IN WHICH THEY WERE EMPLOYED ON MAY 2ND, 1964, WITH THE SAME WAGES AND OTHER EMPLOYMENT BENEFITS WHICH THEY WERE THEN RECEIVING ON THAT DATE;
- (B) THE PARTIES SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS, IF ANY, SUSTAINED BY THE AGGRIEVED PERSONS BETWEEN MAY 2ND, 1964, AND THE DATE OF THEIR ACTUAL REINSTATEMENT IN THE EMPLOY OF THE RESPONDENT PURSUANT TO THIS DETERMINATION. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH LONGER PERIOD AS THEY MAY MUTUALLY AGREE UPON, THE AMOUNT OF SUCH COMPENSATION, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE REQUEST OF EITHER PARTY FOR A HEARING FOR THAT PURPOSE."

9003-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. JOANISSE LIMITED., (MANOR PARK I.G.A. FOODLINER) (RESPONDENT).

9058-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. CAPITAL SUPERMARKETS LIMITED (RESPONDENT).

9059-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. TAYLOR BROTHERS LIMITED (RESPONDENT).

9060-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SHOPPERS CITY LIMITED (RESPONDENT).

9061-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. CENTRAL SUPERMARKETS LIMITED (RESPONDENT).

9075-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. CAPITAL SUPERMARKETS LIMITED (RESPONDENT).

9076-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. CENTRAL SUPERMARKETS LIMITED (RESPONDENT).

9077-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. TAYLOR BROTHERS LIMITED (RESPONDENT).

9097-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SHOPPERS CITY LIMITED (RESPONDENT).

(THE ABOVE COMPLAINTS WERE CONSOLIDATED).

9080-64-U: JOHN BELL (COMPLAINANT) V. LIQUID CARGO LINES (RESPONDENT).

9085-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. LEIGH METAL PRODUCTS LIMITED (RESPONDENT).

9151-64-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA - A.F.L.-C.I.O. (COMPLAINANT) V. ONTARIO TURKEY GROWERS CO-OPERATIVE (RESPONDENT).

9161-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) SENTRY DEPARTMENT STORES LTD. (RESPONDENT).

9162-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. SPRUCE VILLA HOTEL (RESPONDENT).

9164-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. IRVING CHARLES SUPERMARKETS LIMITED (RESPONDENT).

9171-64-U: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS LOCAL 197, HAMILTON (COMPLAINANT) V. NAVAL VETS ASSOCIATION, 108 PARKDALE AVE., HAMILTON, ONTARIO (RESPONDENT).

9225-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. NEW TEMISKAMING HOTEL LIMITED, OPERATING AS HOTEL HAILEYBURY (RESPONDENT).

9247-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210, A.F. OF L. - C.I.O., C.L.C. 709 OUELLETTE AVENUE, WINDSOR, ONTARIO (COMPLAINANT) V. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT).

9258-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. TRITON CENTRES LIMITED (RESPONDENT).

9276-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. LAKEVIEW DAIRY AND RESTAURANT, 185 DUNLOP ST., EAST, BARRIE, ONT. (RESPONDENT).

9293-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. LAKEVIEW DAIRY AND RESTAURANT, 185 DUNLOP ST. EAST, BARRIE, ONT. (RESPONDENT).

9330-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. LAKEVIEW DAIRY AND RESTAURANT 185 DUNLOP ST., BARRIE, ONT. (RESPONDENT).

9331-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. LAKEVIEW DAIRY AND RESTAURANT 185 DUNLOP ST., EAST, BARRIE, ONT. (RESPONDENT).

9332-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDESS INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. LAKEVIEW DAIRY & RESTAURANT 185 DUNLOP ST., EAST BARRIE, ONT. (RESPONDENT).

9336-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. F.W. WOOLWORTH CO. LIMITED (RESPONDENT).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

8855-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. O. J. GAFFNEY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER AND REVIEW ITS DECISION OF AUGUST 21ST, 1964, IN THIS MATTER. IN SUPPORT THEREOF IT IS SUBMITTED THAT THE DECISION IS IN CONFLICT WITH A DECISION OF THE BOARD IN CANADIAN ENGINEERING AND CONTRACTING CO. LIMITED, FILE NO. 8127-63-R. THIS LATTER CASE WAS REFERRED TO DURING ARGUMENT, AND THE BOARD WAS INVITED TO COMPARE THE EVIDENCE IN THE TWO CASES. HOWEVER, IN VIEW OF THE REMARKS OF McRuer, C.J. IN TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52 V. TANGE COMPANY LIMITED, 63 C.L.L.C. 415,459 (P. 655) PARTICULARLY AT P. 661, AND FURTHER, HAVING REGARD TO THE FACT THAT THE DIVISION OF THE BOARD IN THE CANADIAN ENGINEERING CASE WAS NOT THE SAME AS IN THE PRESENT CASE, WE CONCLUDED THAT WE COULD REFER ONLY TO THE ACTUAL DECISION IN THAT CASE.

A COMPARISON OF THE TWO DECISIONS DOES NOT, IN OUR VIEW, DISCLOSE ANY CONFLICT IN POLICY. IN THE FIRST PLACE, THE DECISION IN THE CANADIAN ENGINEERING CASE IS MADE, INTER ALIA, "IN THE SPECIAL CIRCUMSTANCES OF THIS CASE". JUST WHAT THESE SPECIAL CIRCUMSTANCES WERE IS NOT DISCLOSED. BEARING THIS IN MIND, IT IS SURELY NOT OPEN TO THE RESPONDENT TO ARGUE THAT THE DECISION IS A "POLICY" DECISION OF THE BOARD.

THE DECISION IN THE CANADIAN ENGINEERING CASE DISCLOSES THAT THE SIX PERSONS, WHO DID NOT CLAIM TO BE CARPENTERS, WERE ENGAGED IN PERFORMING SUBSTANTIALLY THE SAME WORK AS THE CARPENTERS ON THE JOB. WHILE IT IS NOT SO STATED IN EXPRESS TERMS, THESE WORDS ARE OPEN TO THE INTERPRETATION THAT THE SIX WERE OCCUPIED AT THIS WORK DURING MOST OF THEIR WORKING DAY. CERTAINLY IT IS LIKELY THAT THE BOARD IN THE CANADIAN ENGINEERING CASE WOULD HAVE HAD IN MIND THE PRACTICE REFERRED TO IN OUR DECISION IN THIS CASE, THAT IS, THE PRACTICE OF LOOKING AT WHAT THE EMPLOYEES WERE DOING FOR THE MAJORITY OF THEIR TIME. WHILE THE RESPONDENT SUBMITS THAT THIS POLICY OR PRACTICE WAS NOT REFERRED TO IN THE CANADIAN ENGINEERING CASE, IT HAS BEEN ONE OF LONG STANDING. IN THE PRESENT CASE THE EMPLOYEES WHOM THE RESPONDENT SEEKS TO INCLUDE IN THE BARGAINING UNIT DID NOT WORK THE MAJORITY OF THEIR TIME ON SIMILAR WORK TO THAT BEING PERFORMED BY THE CARPENTERS. THUS, THE TWO CASES WOULD NOT APPEAR TO BE IN CONFLICT.

IF IT IS OBJECTED THAT THIS CONCLUSION IS SPECULATIVE, WE ARE LEFT WITH THE ALTERNATIVE THAT IT CANNOT BE CONTENDED THAT THE TWO DECISIONS ARE IN CONFLICT BECAUSE WITHOUT KNOWING ALL THE FACTS IN THE CANADIAN ENGINEERING CASE, IT IS NOT POSSIBLE TO ARGUE THE MATTER ONE WAY OR THE OTHER. THIS MUCH, HOWEVER, IS CLEAR. THE PRACTICE OR POLICY REFERRED TO ABOVE AND SET OUT IN OUR DECISION OF AUGUST 21ST, 1964, IS NOT A NEW ONE, EVEN THOUGH IT MAY NOT HAVE BEEN ENUNCIATED CLEARLY IN ANY DECISION OF THE BOARD. IN ANY EVENT, AS WE FOUND, SUPRA, WE DO NOT SEE HOW IT IS POSSIBLE TO ARGUE THAT THE CANADIAN ENGINEERING CASE IS A "POLICY" DECISION.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, OUR DECISION OF AUGUST 21ST, 1964, IS HEREBY CONFIRMED."

#### INDEXED ENDORSEMENTS - CERTIFICATION

8251-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. GENERAL WIRE AND CABLE COMPANY LIMITED (RESPONDENT) v. INDEPENDENT WIRE & CABLE WORKERS UNION (INTERVENER).

A NUMBER OF ISSUES WERE DEALT WITH BY THE BOARD IN THE DISPOSITION OF THIS APPLICATION.

ON MAY 19, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AT APPROXIMATELY 9.45 AFTER THE COMMENCEMENT OF THE HEARING ON MAY 6TH, 1964, THE BOARD RECEIVED A TELEGRAM FROM THE APPLICANT WHICH WAS DATED AT PORT HOPE, AT 3.35 P.M. ON MAY 5TH, 1964, WHICH READS IN PART AS FOLLOWS:-

"APPLICANT WILL ALLEGE AT HEARING THAT PRESIDENT OF RESPONDENT COMPANY INTERFERED WITH EMPLOYEES SELECTION OF UNION BY SENDING LETTERS TO ALL EMPLOYEES OPPOSING APPLICANT AND MAKING ALLEGATIONS AGAINST APPLICANT AND FURTHER THAT HE ADDRESSED MEETINGS OF EMPLOYEES OPPOSING APPLICANTS APPLICATION STOP COPIES OF ABOVE WIRED TO APPLICANT AND INTERVENER THIS DATE."

COUNSEL FOR THE INTERVENER AND A GROUP OF EMPLOYEES HAVING ADVISED THE BOARD AT THE OUTSET OF THE HEARING THAT HE HAD NOT RECEIVED A COPY OF THE TELEGRAM UNTIL 9 P.M. THE PREVIOUS EVENING, CHALLENGED THE APPLICANT'S RIGHT TO RAISE THE MATTERS ALLEGED IN THE TELEGRAM AT THIS LATE DATE.

THE APPLICANT WAS INVITED TO ADDUCE EVIDENCE TO JUSTIFY THE DELAY IN MAKING THE CHARGES AND IT APPEARS FROM THE EVIDENCE THAT THE COPIES OF THE LETTERS REFERRED TO IN THE TELEGRAM WERE IN THE POSSESSION OF THE APPLICANT AND THE APPLICANT'S SOLICITOR PRIOR TO THE DATE OF MAKING THIS APPLICATION. IT WOULD FURTHER APPEAR THAT THE APPLICANT ALSO HAD KNOWLEDGE, PRIOR TO THE DATE OF MAKING OF THIS APPLICATION, OF THE MEETINGS OF EMPLOYEES REFERRED TO IN THE TELEGRAM. THE APPLICANT WAS AWARE THAT THE PRESIDENT OF THE RESPONDENT HAD ADDRESSED THE EMPLOYEES WITH RESPECT TO THEIR FUTURE EMPLOYMENT AT THESE MEETINGS. THE WITNESS



CALLED BY THE APPLICANT STATED THAT HE DID NOT RECALL MAKING ANY DETAILED INQUIRIES WITH RESPECT TO THE MEETINGS AND DOES NOT BELIEVE THAT HE ASKED ANY OF THE APPLICANT'S MEMBERS WHO ATTENDED THE MEETINGS, WHETHER OR NOT THE APPLICANT UNION WAS DISCUSSED AT THE MEETINGS BY THE PRESIDENT OF THE RESPONDENT.

THE BOARD IN THE FLECK MANUFACTURING LIMITED CASE, (1962), C.C.H. CANADIAN LABOUR LAW REPORTER ¶16,236 C.L.S. 76-860 STATED AS FOLLOWS:-

"IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR AMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE."

HAVING REGARD TO THE FACT THAT THE APPLICANT HAD FULL KNOWLEDGE OF THE LETTERS AND WAS AWARE OF THE MEETINGS OF WHICH IT NOW COMPLAINS, MORE THAN A MONTH BEFORE IT SAW FIT TO MAKE THE CHARGES WHICH WERE NOT RECEIVED BY THE BOARD UNTIL AFTER THE COMMENCEMENT OF THE HEARING IN THIS MATTER, WE ARE IMPELLED TO FIND THAT THE APPLICANT DID NOT FILE NOTICE OF INTENTION TO ALLEGE IMPROPER OR IRREGULAR CONDUCT BY THE RESPONDENT PROMPTLY UPON DISCOVERING THE CONDUCT ALLEGED AS REQUIRED BY SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE.

WE THEREFORE FIND, FOR THE REASONS GIVEN IN THE FLECK MANUFACTURING LIMITED CASE, THAT THE ALLEGATIONS OF IMPROPER CONDUCT ARE UNTIMELY AND ACCORDINGLY WE WILL NOT ENTERTAIN THEM AND WILL NOT PERMIT THE APPLICANT TO ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION IN SUPPORT OF SUCH ALLEGATIONS.

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE PERMITTED THE APPLICANT TO ADDUCE EVIDENCE WITH RESPECT TO THE CHARGES."

ON JUNE 9, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE INTERVENER THROUGH ITS WITNESSES TESTIFIED THAT MONTHLY DUES WERE DEDUCTED BY THE RESPONDENT FROM THE EMPLOYEES OF THE RESPONDENT. THE MONTHLY DUES WERE CHECKED OFF BY THE RESPONDENT AND FORWARDED TO THE INTERVENER FOR A PERIOD OF AT LEAST FOUR MONTHS PRIOR TO THE AGREEMENT WHICH WAS SUBSEQUENTLY ENTERED INTO BETWEEN THE INTERVENER AND THE RESPONDENT, EFFECTIVE FROM JUNE 1ST, 1963. THE INTERVENER

WITNESSES FURTHER TESTIFIED THAT THE MONTHLY DUES WHICH WERE CHECKED OFF WERE REQUIRED BY THE INTERVENER IN ORDER "TO START THE ORGANIZATION".

THE BOARD THEREFORE FINDS THAT THE RESPONDENT PARTICIPATED IN THE FORMATION OF THE INTERVENER AND PURSUANT TO THE PROVISIONS OF SECTION 36(A) OF THE LABOUR RELATIONS ACT, THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS NOT A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE ACT AND ACCORDINGLY IS NOT A BAR TO THE INSTANT APPLICATION."

ON SEPTEMBER 4, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND ESPECIALLY THE EVIDENCE CONCERNING THE FOLLOWING FACTORS, THE EXTENT OF INTERCHANGE OF EMPLOYEES BETWEEN THE WILLIAM STREET PLANT (HEREINAFTER REFERRED TO AS PLANT #1) AND THE GEORGE STREET PLANT (HEREINAFTER REFERRED TO AS PLANT #2) AT COBOURG, THAT EMPLOYEES WERE PROMOTED FROM ONE PLANT TO THE OTHER, THAT THERE IS A COMMON PAYROLL, COMMON LINE OF SUPERVISION, COMMON WORKING CONDITIONS AND FRINGE BENEFITS EXISTING BETWEEN PLANT #1 AND PLANT #2, THE EXTENT OF INTEGRATION OF PRODUCTION BETWEEN PLANT #1 AND PLANT #2 AND THE FACT THAT THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT IN PLANT #1 AND PLANT #2 OPPOSED THE SEVERING OF ONE PLANT FROM THE OTHER FOR THE PURPOSE OF COLLECTIVE BARGAINING, THE BOARD FINDS THAT THE EMPLOYEES EMPLOYED BY THE RESPONDENT IN PLANT #1 AND PLANT #2 CONSTITUTE ONE BARGAINING UNIT FOR THE PURPOSE OF COLLECTIVE BARGAINING."

8686-64-R: ORANGEVILLE ELECTRICAL APPLIANCE WORKERS UNION LOCAL 1614, CANADIAN LABOUR CONGRESS (APPLICANT) V. FILTRO ELECTRIC LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS APPLICATION FOR CERTIFICATION CAME ON FOR HEARING ON JUNE 22ND, 1964. AT THE HEARING IN REPLY TO A QUESTION PUT BY THE BOARD, THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT WAS A CHARTERED LOCAL OF THE CANADIAN LABOUR CONGRESS.

IT WAS ANNOUNCED AT THE HEARING THAT THE APPLICANT HAD FILED FORM 8 - STATEMENT ON STATUS OF TRADE UNION OVER THE SIGNATURE OF HARRY SIMON, THE REPRESENTATIVE OF THE APPLICANT, AND THAT THIS STATEMENT WAS ON THE FORM PROVIDED FOR IN THE BOARD'S RULES OF PROCEDURE. MR. SIMON STATED IN THE FORM THAT HE IS A PERSON WHO HAS KNOWLEDGE OF THE AFFAIRS OF THE APPLICANT. THIS STATEMENT WAS FILED BY THE APPLICANT ON THE DATE THE APPLICATION WAS MADE.

THE APPLICANT'S STATUS AS A TRADE UNION WAS NOT CHALLENGED BY THE RESPONDENT.

FOLLOWING THE HEARING, WHEN THE BOARD WAS CONSIDERING THIS APPLICATION, A QUESTION AROSE IN THE MINDS OF THE BOARD MEMBERS AS TO WHETHER OR NOT THIS APPLICANT WAS BEFORE THE BOARD FOR THE FIRST TIME.

TO REMOVE ANY DOUBT WITH RESPECT TO THE STATUS OF THE APPLICANT, THE BOARD REQUESTED THE REGISTRAR TO HAVE THE APPLICANT FILE ITS CHARTER. THE APPLICANT FILED ITS CHARTER WHICH WAS RETURNED TO THE APPLICANT BY THE BOARD ON JUNE 23RD, 1964 (THE DAY FOLLOWING THE HEARING) AFTER THE BOARD HAVING FIRST MADE A PHOTOSTAT COPY OF THE CHARTER FOR THE BOARD'S PURPOSES.

IN DUE COURSE, THE RESPONDENT WAS ADVISED OF THE DATE WHICH APPEARED ON THE CHARTER AND THE RESPONDENT WAS ALSO GIVEN THE OPPORTUNITY TO INSPECT THE CHARTER AND MAKE SUCH REPRESENTATIONS WITH RESPECT THERETO AS IT SAW FIT.

IN EVERY APPLICATION FOR CERTIFICATION, THE BOARD MUST BE SATISFIED THAT THE APPLICANT TRADE UNION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

WHERE AN ORGANIZATION WHICH CLAIMS TO BE A TRADE UNION APPEARS BEFORE THE BOARD FOR THE FIRST TIME, THE BOARD ON ITS OWN MOTION CONDUCTS FURTHER INQUIRIES INTO THE STATUS OF SUCH ORGANIZATION SINCE IT IS THE BOARD'S RESPONSIBILITY TO SATISFY ITSELF THAT THE ORGANIZATION IS A TRADE UNION WITHIN THE MEANING OF THE ACT.

HAD THE BOARD BEEN AWARE AT THE HEARING THAT THE APPLICANT WAS BEFORE THE BOARD FOR THE FIRST TIME, THE BOARD WOULD HAVE REQUESTED THE APPLICANT TO FILE ITS CHARTER AND IF THE CHARTER WAS NOT AVAILABLE TO THE APPLICANT AT THE HEARING, THE BOARD WOULD HAVE FOLLOWED ITS PAST PRACTICE OF REQUESTING THE APPLICANT TO FILE ITS CHARTER AFTER THE HEARING. WHILE THE REQUEST TO FILE THE CHARTER IN THE INSTANT CASE WAS NOT MADE AT THE HEARING, THE BOARD, SUBSEQUENT TO THE HEARING, REQUESTED THAT THE CHARTER BE FILED IN ORDER TO PROTECT THE RIGHTS OF BOTH PARTIES. ALTHOUGH GIVEN FULL OPPORTUNITY TO INSPECT THE CHARTER, THE RESPONDENT HAS NOT SEEN FIT TO DO SO. WHILE THE BOARD'S PROCEDURE IN CAUSING THE CHARTER TO BE FILED SUBSEQUENT TO THE HEARING HAS BEEN CHALLENGED BY THE RESPONDENT, THE RESPONDENT HAS NOT CHALLENGED THE STATUS OF THE APPLICANT ALTHOUGH IT HAS HAD EVERY OPPORTUNITY TO DO SO.

HAVING REGARD TO THE FACT THAT THE CANADIAN LABOUR CONGRESS IS AN ORGANIZATION WHICH HAS BEEN PREVIOUSLY RECOGNIZED BY THE BOARD AS A CHARTERING BODY, THE VIVA VOCE EVIDENCE AT THE HEARING THAT THE APPLICANT IS A CHARTERED LOCAL OF THE CANADIAN LABOUR CONGRESS, THE INFORMATION CONTAINED IN FORM 8 STATEMENT ON STATUS OF TRADE UNION FILED BY THE APPLICANT, ALL OF WHICH HAS BEEN CONFIRMED BY THE CHARTER OF THE APPLICANT FILED SUBSEQUENT TO THE HEARING, AND THE FACT THAT THE STATUS OF THE APPLICANT WAS NOT CHALLENGED, WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT...

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT OLIVE REAST, EMPLOYED BY THE RESPONDENT AS A PART TIME OFFICE CLEANER, IS NOT INCLUDED IN THE BARGAINING UNIT.

...THE MAJORITY OF THE BOARD IS NOT PREPARED TO ACCEPT THE STATEMENTS CONTAINED IN THE MINORITY DISSENT IN THE CASE AS OUTLINING THE POLICIES OF THE BOARD."



BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I CANNOT CONCUR IN THE FINDING OF THE MAJORITY THAT THE APPLICANT UNION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT OR ACCEPT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT BECAUSE OF THE COMPLETE LACK OF EVIDENCE ADDUCED AT THE HEARING CONCERNING THE GRANTING OF THE CHARTER TO LOCAL 1614.

NOT BEING INFORMED THAT THIS WAS THE FIRST TIME THE APPLICANT HAD BEEN A PARTY TO A PROCEEDING BEFORE IT, THE BOARD, FOLLOWING ITS USUAL PRACTICE, IMMEDIATELY PROCEEDED TO EXAMINE THE DESCRIPTION OF THE PROPOSED BARGAINING UNIT. IN MY OPINION THERE WAS AN ONUS ON THE APPLICANT TO INFORM THE BOARD THAT IT HAD NOT PREVIOUSLY ESTABLISHED ITS STATUS. IF IT HAD DONE SO, THE BOARD WOULD HAVE CONDUCTED ITS USUAL ENQUIRY CONCERNING THE DATE THE CHARTER WAS GRANTED TO THE APPLICANT BY THE CANADIAN LABOUR CONGRESS.

SUBSEQUENT TO THE HEARING, THE APPLICANT, AT THE REQUEST OF THE REGISTRAR, FILED A COPY OF ITS CHARTER WITH THE BOARD. HOWEVER, AS THIS EVIDENCE WAS NOT ADDUCED OR EVEN REFERRED TO AT THE HEARING, THE BOARD, IN MY OPINION, CAN GIVE NO WEIGHT TO IT. THE BOARD HAS A LONG STANDING POLICY, WHICH HAS BEEN STRICTLY ADHERED TO, THAT IT WILL NOT RECEIVE EVIDENCE AFTER THE HEARING THAT WAS AVAILABLE TO THE PARTIES AT THE TIME OF THE HEARING.

THE COCHRANE-DUNLOP HARDWARE LIMITED CASE, C. C. H. CANADIAN LABOUR LAW CASES, VOLUME 2 - 1960-64, ¶16,268, CLEARLY SUPPORTS MY CONTENTION THAT THE BOARD IN PAST PRACTICE HAS REQUIRED THAT EVIDENCE ESTABLISHING THE STATUS OF THE APPLICANT UNION MUST BE ADDUCED AT THE HEARING. IN THAT CASE, EVIDENCE WAS ADDUCED AT THE HEARING TO ESTABLISH (1) THE DATE ON WHICH FORMAL APPROVAL TO ESTABLISH THE LOCAL UNION WAS GRANTED; (2) THE DATE ON WHICH THE CHARTER WAS APPLIED FOR; AND (3) THE DATE ON THE FORMAL CHARTER ITSELF. NO EVIDENCE WAS ADDUCED AT THE HEARING IN THE INSTANT CASE CONCERNING THE CHARTER NOR WAS THERE A DIRECTION BY THE BOARD OR AN UNDERTAKING BY THE APPLICANT AT THE HEARING TO FILE THE CHARTER WITH THE BOARD SUBSEQUENT TO THE HEARING. CONSEQUENTLY, THE CHARTER IS NOT ADMISSIBLE AS EVIDENCE. WITHOUT THE CHARTER, THE BOARD DOES NOT KNOW THE DATE THE APPLICANT UNION CAME INTO EXISTENCE AND, THEREFORE, CANNOT ASCERTAIN WHETHER THE APPLICATION FOR MEMBERSHIP AND RECEIPTS FILED BY THE APPLICANT WITH THE BOARD WERE SIGNED BEFORE OR AFTER THE CHARTER WAS ISSUED. IN THESE CIRCUMSTANCES, NO WEIGHT SHOULD BE GIVEN TO THEM.

I MUST ALSO TAKE ISSUE WITH THE MAJORITY DECISION THAT FORM 8 PER SE IS SUFFICIENT EVIDENCE OF THE APPLICANT'S STATUS. IN MY VIEW, PRIOR TO THE BOARD GRANTING STATUS AS A TRADE UNION, THE STATEMENT IN FORM 8 THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT IS MERELY A STATEMENT OF OPINION BY THE PERSON WHO IS SIGNATORY TO FORM 8. IN THE INSTANT CASE, A REPRESENTATIVE OF THE UNION HAS GIVEN A STATEMENT THAT IN HIS OPINION THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF THE ACT, BUT NO EVIDENCE WAS CALLED IN SUPPORT OF THIS EXPRESSION OF OPINION. TO ACCEPT SUCH AN UNSUPPORTED STATEMENT THE BOARD WOULD BE PERMITTING THE APPLICANT TO MAKE ITS OWN FINDING THAT IT IS A TRADE UNION WITH THE MEANING OF



THE LABOUR RELATIONS ACT RATHER THAN THE BOARD, WHICH IS THE SOLE TRIBUNAL AUTHORIZED UNDER THE ACT TO MAKE SUCH A FINDING.

FOR THESE REASONS, I FIND THE APPLICANT HAS FAILED TO PROVE ITS STATUS AS A TRADE UNION AND I WOULD HAVE DISMISSED THE APPLICATION."

8811-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
(APPLICANT) V. CANADIAN ELECTRIC BOX AND STAMPINGS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT AND A GROUP OF EMPLOYEES HAVE MADE ALLEGATIONS OF UNFAIR CONDUCT AGAINST THE APPLICANT. THESE ALLEGATIONS FALL INTO TWO CATEGORIES. THE FIRST TYPE OF ALLEGATION IS THAT CERTAIN EMPLOYEES IN THE PROPOSED BARGAINING UNIT THREATENED THE FUTURE EMPLOYMENT OF OTHER EMPLOYEES IF THEY REFUSED TO JOIN THE UNION. THE SECOND TYPE OF ALLEGATION IS THAT CERTAIN EMPLOYEES OF THE RESPONDENT WHO WERE SOLICITING UNION MEMBERSHIP ON BEHALF OF THE APPLICANT TOLD OTHER EMPLOYEES THAT IF THEY DID NOT JOIN THE UNION AND PAY \$1.00 INITIATION FEE PRIOR TO THE UNION BECOMING CERTIFIED AS BARGAINING AGENT, IT WOULD COST THEM BETWEEN \$25.00 AND \$75.00 FOR INITIATION FEE AFTER CERTIFICATION.

DEALING WITH THE FIRST SET OF ALLEGATIONS, WE HAVE EVIDENCE THAT STATEMENTS WERE MADE RESPECTING THE FUTURE EMPLOYMENT OF THREE EMPLOYEES. MR. GLOWIENKA TESTIFIED THAT A FELLOW EMPLOYEE MR. VELOCCI, WHO WAS ACTIVE IN SUPPORT OF THE APPLICANT UNION, TOLD HIM THAT WHEN THE UNION CAME IN, IT WOULD "KICK OUT" GLOWIENKA, AND JOHN SCHOEFFMANN THE PLANT MANAGER. A SECOND EMPLOYEE MR. DELMEDICO TESTIFIED THAT HE WAS TOLD BY MR. VERTOLLI, A FELLOW EMPLOYEE, THAT IF HE REFUSED TO JOIN THE UNION AFTER THE UNION CAME IN IT COULD "SEND ME OUT". A THIRD EMPLOYEE MR. HAYM TESTIFIED THAT A FELLOW EMPLOYEE FRED MOELLERING TOLD HIM THAT THE UNION CAN "FIRE YOU".

IT IS APPARENT FROM THE EVIDENCE THAT MR. GLOWIENKA AND MR. VELOCCI HAD ENGAGED IN AN ARGUMENT CONCERNING THE UNION AND THE STATEMENT MADE TO MR. GLOWIENKA WAS MADE IN THE HEAT OF THAT ARGUMENT. WHATEVER MAY HAVE TRANSPIRED BETWEEN MR. GLOWIENKA AND MR. VELOCCI IT DID NOT CAUSE MR. GLOWIENKA TO BECOME A UNION MEMBER. ON ALL OF THE EVIDENCE RELATING TO MR. VELOCCI WE WOULD FIND THAT HIS STATEMENT TO MR. GLOWIENKA WAS AN ISOLATED ONE MADE IN THE HEAT OF ARGUMENT.

MR. DELMEDICO'S EVIDENCE DEALT ENTIRELY WITH THE ALLEGATION THAT THE INITIATION FEE WOULD BE INCREASED FOLLOWING CERTIFICATION, SAVE FOR A COMMENT IN PASSING, THAT AN EMPLOYEE, MR. VERTOLLI, TOLD HIM THAT THE UNION COULD "SEND ME OUT". COUNSEL FOR THE OBJECTORS DID NOT ASK MR. DELMEDICO TO DEVELOPE OR EXPLAIN THIS REMARK AND COUNSEL FOR THE RESPONDENT DID NOT QUESTION THIS WITNESS. FROM THE MANNER IN WHICH HIS EVIDENCE WAS GIVEN AND BECAUSE IT WAS CLEAR FROM ALL HIS EVIDENCE THAT, WHILE HE WAS SUMMONED BY THE OBJECTORS TO GIVE EVIDENCE IN OPPOSITION TO THE APPLICANT, HIS ONLY COMPLAINT AGAINST THE UNION WAS CONCERNING

THE AMOUNT OF INITIATION FEE. HOWEVER, HE JOINED THE APPLICANT UNION AT THE INSTANCE OF ANOTHER EMPLOYEE MR. ASSENZA AT A UNION MEETING AT WHICH A UNION OFFICIAL TOLD HIM THE INITIATION FEE WOULD NOT BE CHANGED AFTER CERTIFICATION.

MR. HAYM MENTIONED IN HIS EVIDENCE THAT A FELLOW EMPLOYEE MR. MOELLERING SAID THE UNION CAN "FIRE YOU". HIS MAIN COMPLAINT, HOWEVER, SEEMED TO BE THAT HE CONSIDERED THAT THE APPLICANT UNION HAD MADE FALSE PROMISES. IT WAS NOT UNTIL AFTER MR. SCHOEFFMANN ASKED MR. HAYM WHETHER HE HAD JOINED THE UNION THAT MR. HAYM SENT A LETTER TO THE BOARD COMPLAINING ABOUT THE UNION PROMISES AND REQUESTED THAT HIS MEMBERSHIP IN THE UNION NOT BE COUNTED. WHEN ASKED ON CROSS-EXAMINATION WHY HE DID JOIN THE UNION, HAYM STATED THAT HE JOINED BECAUSE OF PROMISES OF MORE PAY, HOSPITALIZATION AND LIFE INSURANCE. MR. MOELLERING WAS NOT THE PERSON WHO SIGNED MR. HAYM INTO THE UNION. NO COMPLAINT WAS MADE AGAINST THE PERSON WHO SIGNED UP MR. HAYM ALTHOUGH THAT PERSON APPEARS TO HAVE BEEN THE MAIN ORGANIZER.

NO OFFICER OR OFFICIAL OF THE UNION MADE ANY THREATS OF ANY KIND TO ANY OF THE EMPLOYEES. WE DO HAVE EVIDENCE FROM FIVE OF THE EMPLOYEES CALLED BY EITHER THE RESPONDENT OR THE OBJECTORS IN OPPOSITION TO THIS APPLICATION, NO SUGGESTION WAS MADE TO THEM THAT NON-UNION EMPLOYEES MIGHT LOSE THEIR JOB AFTER CERTIFICATION OF THE APPLICANT. THE STATEMENTS WERE MADE BY PERSONS WHO OBVIOUSLY HAD NO AUTHORITY OVER THE THREE EMPLOYEES AND NO WAY TO CARRY OUT THE CONSEQUENCES OF THE STATEMENTS. THE STATEMENTS WERE MADE BY PERSONS WHO WERE KNOWN TO BE RANK AND FILE EMPLOYEES AND WHO WERE NOT OFFICIALS OR REPRESENTATIVES OF THE UNION. THE PERSONS AGAINST WHOM THE ALLEGATIONS WERE MADE WERE NOT THE PERSONS WHO SIGNED UP THE WITNESSES MAKING THE ALLEGATIONS. NO ALLEGATIONS WERE MADE AGAINST THE PEOPLE WHO ACTUALLY SIGNED UP THESE WITNESSES AS UNION MEMBERS.

WE HAVE EVIDENCE FROM AT LEAST ONE WITNESS CALLED BY THE OBJECTORS IN OPPOSITION TO THIS APPLICATION THAT A UNION OFFICIAL AT A UNION MEETING ATTEMPTED TO DISPELL FALSE RUMOURS.

WE ARE OF OPINION THAT WHILE THERE WAS GENERAL TALK BY EMPLOYEES IN THE PLANT CONCERNING WHAT A UNION COULD OR COULD NOT DO, AND WHILE THE EMPLOYEES IN THE EXCITEMENT OF THE CAMPAIGN MAY HAVE MADE EXTRAVAGANT STATEMENTS, THERE IS NOTHING BEFORE US FROM WHICH WE COULD DRAW THE INFERENCE THAT THERE WAS ANY INTIMIDATION OR COERCION WITH RESPECT TO THE EMPLOYMENT OF NON-UNION MEMBERS.

WE ARE FURTHER OF OPINION THAT THE STATEMENTS CONCERNING EMPLOYMENT WERE NOT MADE AT THE INSTANCE OF THE UNION. HAVING REGARD TO THE MANNER AND CONTEXT IN WHICH THE STATEMENTS WERE MADE AND THE FACT THAT THEY WERE MADE BY EMPLOYEES WHO HAD NO OFFICIAL CAPACITY IN THE UNION AND NO AUTHORITY OVER OTHER EMPLOYEES, WE ARE IMPELLED TO FIND THAT NO REASONABLE PERSON WOULD HAVE BEEN INTIMIDATED OR COERCED BY THEM.

WHERE A UNION HAS NOT AUTHORIZED, ENCOURAGED OR CONDONED INTEMPERATE STATEMENTS OR RUMOURS BUT ON THE CONTRARY ITS OFFICIALS AT UNION MEETINGS HAVE ATTEMPTED TO DISPELL FALSE INFORMATION THE UNION

CANNOT BE HELD ACCOUNTABLE FOR EVERY STATEMENT MADE BY RANK AND FILE EMPLOYEES DURING THE HEAT OF AN ORGANIZATION CAMPAIGN.

THE EVIDENCE CONCERNING THE STATEMENTS MADE BY EMPLOYEES WAS NOT SUCH AS TO LEAD US TO FIND THAT THERE WAS ANY PATTERN OF SUCH STATEMENT EVEN IF THE MEMBERSHIP EVIDENCE OF THE APPLICANT WAS REDUCED BY DELETING THE CARDS SIGNED BY THE THREE PERSONS TO WHOM THE STATEMENTS WERE MADE, THE APPLICANT WOULD STILL HAVE IN EXCESS OF FIFTY-FIVE PER CENT OF THE EMPLOYEES AS MEMBERS.

THE SECOND CHARGE OF UNFAIR CONDUCT CONSISTS OF STATEMENTS MADE BY EMPLOYEE MEMBERS OF THE APPLICANT WHO WERE SOLICITING UNION MEMBERSHIP AND FOR THIS PURPOSE STATED THAT THE INITIATION FEE WOULD BE INCREASED FROM \$1.00 TO \$25.00 AFTER CERTIFICATION.

THERE IS NOTHING IN THE LABOUR RELATIONS ACT TO PREVENT A UNION FROM REDUCING ITS INITIATION FEE DURING AN ORGANIZATION DRIVE TO FACILITATE THE SIGNING OF UNION MEMBERS AND THEREAFTER CHARGE A LARGER INITIATION FEE AS PROVIDED BY ITS CONSTITUTION. IF A UNION CAN DO THIS THEN THE SUGGESTION THAT IT WILL DO SO CANNOT OF ITSELF BE AN UNFAIR LABOUR PRACTICE ESPECIALLY WHERE THE SUGGESTION IS MADE BY PERSONS WHO ARE NOT OFFICERS OR REPRESENTATIVES OF THE UNION. IN ANY EVENT, SUCH SUGGESTIONS COULD NOT BE CONSTRUED AS THREATS SINCE THE PERSONS MAKING THEM WERE KNOWN TO HAVE NO POWER TO ENFORCE THEM. IN THIS CASE, THE DIRECTOR OF ORGANIZATION OF THE APPLICANT UNION STATED AT A UNION MEETING THAT THE INITIATION FEE WOULD NOT BE INCREASED AFTER CERTIFICATION.

THE CONDUCT OF THE EMPLOYEE MEMBERS OF THE APPLICANT AGAINST WHOM THE ABOVE ALLEGATIONS WERE MADE IN THIS CASE IS NOT THE TYPE OF CONDUCT WHICH IN OUR OPINION, COULD BE CLASSIFIED AS INTIMIDATION OR COERCION OF THE TYPE FOUND IN THE MILNET MINES LIMITED CASE, CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17, 063, CANADIAN FABRICATED PRODUCTS LIMITED CASE, CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17, 090, IN WHICH CASES THREATS WERE MADE WHICH WERE OF A TYPE WHICH COULD REASONABLY BE CARRIED OUT AND WOULD HAVE ADVERSELY INFLUENCED THE AVERAGE EMPLOYEE.

WE HAVE TAKEN OTHER FACTORS INTO CONSIDERATION AND THESE HAVE HAD A BEARING ON THE ABOVE FINDINGS. SOME OF THESE FACTORS ARE THAT MEMBERS OF MANAGEMENT INITIATED CONVERSATIONS WITH CERTAIN EMPLOYEES TO ASCERTAIN WHETHER THEY WERE UNION MEMBERS AND SUBSEQUENTLY COMPELLED THEIR APPEARANCE AT THE HEARING BY SUMMONS. WHILE THERE ARE IN EXCESS OF 190 EMPLOYEES IN THE BARGAINING UNIT AND WHILE THREE DOCUMENTS WERE SUBMITTED IN OPPOSITION TO THE APPLICATION BEARING A TOTAL OF 39 SIGNATURES, THE APPLICANT CLAIMED ONLY THREE AS MEMBERS. NOTWITHSTANDING THE ORGANIZED OPPOSITION TO THIS APPLICATION, THERE WAS A DEARTH OF EVIDENCE OF ANY SUBSTANCE IN SUPPORT OF THE CHARGES. IN ADDITION, SOME OF THE WITNESSES CALLED BY BOTH THE RESPONDENT AND THE OBJECTORS IN SUPPORT OF THE CHARGES STATED THAT THEY HAD NO COMPLAINT AGAINST THE APPLICANT AND WOULD NOT HAVE APPEARED AT THE HEARING IF THEY HAD NOT BEEN SUMMONSED. ALL THE EVIDENCE, IN THE LIGHT OF THESE FACTS, HAS IMPELLED US TO FIND THAT THE STATEMENTS MADE BY THE EMPLOYEES DID NOT CONSTITUTE INTIMIDATION OR COERCION WHICH WOULD PREVENT THE EMPLOYEES FROM FREELY EXPRESSING THEIR WISHES WITH RESPECT TO UNION MEMBERSHIP. WE THEREFORE FIND THAT THE



MEMBERSHIP POSITION OF THE APPLICANT HAS NOT BEEN ADVERSELY AFFECTED BY THE CHARGES OF UNFAIR PRACTICE MADE AGAINST THE APPLICANT.

BOARD MEMBER MORRIS C. HAY DISSENTED AND SAID:-

"I DISSENT. THE EVIDENCE WHICH I ACCEPT IN THIS MATTER AND THE REASONABLE INFERENCES AND CONCLUSIONS TO BE DRAWN THEREFROM SATISFIES ME THAT CERTAIN EMPLOYEES OF THE RESPONDENT COMPANY, WHO FOR THE PURPOSES OF THE APPLICANT UNION'S ORGANIZATIONAL CAMPAIGN I FIND TO BE ITS REPRESENTATIVES, ENGAGED IN A PATTERN OF INTIMIDATION AND COERCION TO COMPEL OTHER EMPLOYEES OF THE COMPANY TO BECOME UNION MEMBERS CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT. ACCORDINGLY I WOULD DISMISS THE APPLICATION."

9028-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VAN'S MOVING & CARTAGE (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 200, N. C.C.L. (INTERVENER).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. IN ADDITION TO THIS APPLICATION THE APPLICANT FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN ITSELF AND THE RESPONDENT DATED MAY 11TH, 1959, COVERING THE SAME UNIT OF EMPLOYEES APPLIED FOR IN ITS APPLICATION. THE AGREEMENT CONTAINS A PROVISION FOR ITS EXPIRY ON DECEMBER 31ST, 1961. THERE IS NO PROVISION FOR ITS CONTINUATION OR RENEWAL. THE INTERVENER ALSO FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN ITSELF AND THE RESPONDENT, COVERING THE SAME EMPLOYEES, EFFECTIVE FROM MAY 7TH, 1963 TO MAY 6TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. NEITHER THE APPLICANT NOR THE INTERVENER WERE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES IN QUESTION; THE RESPONDENT HAVING GIVEN VOLUNTARY RECOGNITION TO EACH OF THEM AS BARGAINING AGENT.

THE APPLICANT ARGUES THAT NOTWITHSTANDING THE FACT THAT THE COLLECTIVE AGREEMENT WITH THE RESPONDENT CONTAINS NO PROVISION FOR ITS AUTOMATIC RENEWAL, AND NOTWITHSTANDING THE FACT THAT THERE HAS BEEN NO COMMUNICATION BETWEEN THE APPLICANT AND THE RESPONDENT SINCE DECEMBER 1960, THE APPLICANT HAS NOT ABANDONED ITS BARGAINING RIGHTS AND THESE RIGHTS ARE STILL EXTANT. ALTERNATIVELY, THE APPLICANT ARGUES THAT EVEN IF THE BOARD WERE TO FIND THAT THE APPLICANT HAS ABANDONED ITS BARGAINING RIGHTS, THE COLLECTIVE AGREEMENT ENTERED INTO BY THE INTERVENER AND THE RESPONDENT CONTRAVENES SECTION 36 OF THE LABOUR RELATIONS ACT AND IS THEREFORE INVALID. ACCORDINGLY, THIS AGREEMENT DOES NOT ACT AS A BAR TO THE INSTANT APPLICATION. MORE PARTICULARLY, THE APPLICANT ALLEGES THAT THERE WAS COLLUSION BETWEEN THE INTERVENER AND RESPONDENT AT THE TIME THEY SIGNED THAT AGREEMENT IN MAY 1963.

THE INTERVENER ARGUES THAT HAVING REGARD TO THE PROVISIONS OF SECTIONS 5 AND 40 OF THE LABOUR RELATIONS ACT, WHEN A UNION IS VOLUNTARILY RECOGNIZED AS BARGAINING AGENT BY AN EMPLOYER AND A COLLECTIVE AGREEMENT IS ENTERED INTO, THE BARGAINING RIGHTS OF THE UNION CEASE TO EXIST UPON THE TERMINATION OF THE COLLECTIVE AGREEMENT. THE INTERVENER FURTHER ARGUES THAT THE BARGAINING RIGHTS OF A TRADE UNION ONLY CONTINUE IN EFFECT AFTER THE EXPIRATION OF A COLLECTIVE AGREEMENT IF THE UNION HAS



BEEN CERTIFIED BY THE BOARD AS THE BARGAINING AGENT. THE INTERVENER THUS ASSERTS THAT SINCE THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT EXPIRED ON DECEMBER 31ST, 1961 AND THERE WAS NO PROVISION FOR THE CONTINUATION OR RENEWAL OF THE AGREEMENT, THE BARGAINING RIGHT OF THE APPLICANT CEASED TO EXIST ON THAT DATE.

WE DO NOT FIND SUPPORT FOR THE ARGUMENT OF THE INTERVENER IN SECTION 5 OR SECTION 40 OF THE LABOUR RELATIONS ACT THAT WHEN A TRADE UNION IS ACCORDED VOLUNTARY RECOGNITION AS BARGAINING AGENT ITS BARGAINING RIGHTS CEASE UPON THE EXPIRATION OF THE COLLECTIVE AGREEMENT. IN OUR OPINION REGARDLESS OF WHETHER BARGAINING RIGHTS ARE SECURED BY CERTIFICATION OR VOLUNTARY RECOGNITION, THE TRADE UNION CONTINUES TO HOLD THESE RIGHTS UNTIL TERMINATED ON AN APPLICATION TO THIS BOARD OR UNTIL THE UNION ABANDONS ITS BARGAINING RIGHTS. IN THE INSTANT CASE, HAVING REGARD TO THE FACT THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EXPIRED IN DECEMBER OF 1961 AND THE APPLICANT HAS MADE NO EFFORT TO ASSERT ITS BARGAINING RIGHTS SINCE THAT TIME, THE BOARD FINDS THAT THE APPLICANT ABANDONED ITS BARGAINING RIGHTS PRIOR TO THE DATE UPON WHICH THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT.

IN SUPPORT OF THE APPLICANT'S ALLEGATION THAT THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT IS INVALID, WE HAVE THE EVIDENCE OF ALEX WHITNEY WHO HAS BEEN A DRIVER IN THE EMPLOY OF THE RESPONDENT FOR THE PAST TWO AND A HALF YEARS. WHITNEY TESTIFIED THAT SOME TIME IN JANUARY OF 1963 WHEN HE WAS IN THE OFFICE OF MR. VANDERWAL THE PRESIDENT OF THE RESPONDENT COMPANY, HE WAS INTRODUCED BY VANDERWAL TO A MR. MILLS, A REPRESENTATIVE OF THE INTERVENER UNION. ON THAT OCCASION, IN THE PRESENCE OF MILLS, VANDERWAL INFORMED WHITNEY THAT THEY "WERE GOING TO GO INTO UNION LOCAL 200" BECAUSE THEY "WOULD NEED TO BE IN THE UNION IN ORDER TO HAUL FREIGHT OFF THE DOCKS". MILLS THEREUPON GAVE WHITNEY A MEMBERSHIP CARD WHICH WHITNEY COMPLETED AND RETURNED TO MILLS TOGETHER WITH A ONE DOLLAR INITIATION FEE. MILLS AT THAT TIME ALSO GAVE HIM THREE OR FOUR MEMBERSHIP CARDS FOR THE PURPOSE OF SIGNING UP OTHER DRIVERS. AT SOME LATER DATE VANDERWAL TOLD WHITNEY THAT HE (VANDERWAL) HAD "GOTTEN A COUPLE OF OTHER EMPLOYEES TO SIGN UNION MEMBERSHIP CARDS".

WHITNEY TESTIFIED THAT NEITHER HE NOR, TO HIS KNOWLEDGE, ANY OTHER EMPLOYEE HAD ACTED ON A BARGAINING COMMITTEE AND THAT HE HAD HAD NO COMMUNICATION FROM ANY REPRESENTATIVE OF THE INTERVENER SINCE HIS MEETING WITH MILLS. AFTER THE AGREEMENT WAS ENTERED INTO UNION DUES WERE DEDUCTED BY THE RESPONDENT FROM HIS PAY, ALTHOUGH HIS EVIDENCE IS THAT HE DID NOT SIGN ANY AUTHORIZATION CARD FOR SUCH DEDUCTIONS, NOR HAS HE RECEIVED ANY RECEIPT FROM THE INTERVENER FOR THE PAYMENT OF DUES. SINCE DECEMBER OF 1963, HOWEVER, THE RESPONDENT HAS CEASED TO DEDUCT UNION DUES FROM HIS PAY AND WHITNEY HAS NOT PAID ANY DUES TO THE UNION SINCE THAT TIME.

COUNSEL FOR THE INTERVENER ARGUES THAT THE EVIDENCE OF WHITNEY DOES NOT ESTABLISH A VIOLATION OF SECTION 36 SO AS TO INVALIDATE THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT. COUNSEL NOTED THAT THE TRANSACTION CONCERNING THE MEMBERSHIP CARDS TOOK PLACE BETWEEN MILLS AND WHITNEY. THE FACT THAT VANDERWAL HAPPENED TO BE PRESENT DOES NOT SUPPORT THE ALLEGATION OF COLLUSION. HE FURTHER STATES THAT WHITNEY ACTED OF HIS OWN VOLITION. COUNSEL FOR THE INTERVENER ALSO

ARGUES THAT EVEN IF THE BOARD WERE TO FIND THAT THE CONDUCT OF VANDERWAL CONSTITUTED A VIOLATION OF THE LABOUR RELATIONS ACT, THE EVIDENCE RELATING TO VANDERWAL IS NOT EVIDENCE AGAINST THE INTERVENER

HAVING REGARD TO THE EVIDENCE BEFORE US, WE ARE OF THE OPINION THAT THE APPLICANT HAS CAST SUFFICIENT DOUBT UPON THE VALIDITY OF THE COLLECTIVE AGREEMENT AS TO MAKE IT INCUMBENT UPON THE INTERVENER OR THE RESPONDENT TO PROVIDE SOME EXPLANATION. NO EVIDENCE, HOWEVER, WAS ADDUCED BY EITHER THE INTERVENER OR THE RESPONDENT. (VANDERWAL WAS PRESENT IN THE BOARD ROOM DURING THE SEPTEMBER 15TH HEARING. HE WAS GIVEN NOTICE OF THE ALLEGATIONS OF THE APPLICANT AND WAS GIVEN AN OPPORTUNITY TO CONSIDER THEM. HE THEREUPON INFORMED THE BOARD THAT HE DID NOT WISH TO PARTICIPATE IN THE PROCEEDINGS ALTHOUGH HE WAS INVITED TO DO SO.) WHILE THE BOARD, ON THE EVIDENCE BEFORE IT, IS NOT PREPARED TO MAKE A FINDING THAT THERE WAS COLLUSION BETWEEN THE INTERVENER AND THE RESPONDENT, WE DO FIND THAT THE RESPONDENT DID LEND SUPPORT TO THE INTERVENER AND THEREBY VIOLATED SECTION 36 OF THE LABOUR RELATIONS ACT.

THE BOARD ACCORDINGLY DEEMS THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER NOT TO BE A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. WE THEREFORE FIND THAT THE INTERVENER DOES NOT HAVE THE BARGAINING RIGHTS FOR THE UNIT OF EMPLOYEES SOUGHT BY THE APPLICANT. WE WOULD ADD THAT WE DO NOT ACCEPT THE ARGUMENT OF COUNSEL FOR THE INTERVENER THAT THE EVIDENCE OF WHITNEY IS NOT EVIDENCE AGAINST THE INTERVENER. HAVING REGARD TO ALL THE EVIDENCE, AND THE ABSENCE OF ANY EXPLANATION, WE ARE OF THE OPINION THAT THE TESTIMONY OF WHITNEY HAS APPLICATION TO THE CONDUCT OF THE INTERVENER AS WELL AS THE RESPONDENT."

#### INDEXED ENDORSEMENT - TERMINATION

8898-64-R: DOROTHY HALL (APPLICANT) v. WELDERS, PUBLIC GARAGE EMPLOYEES, MOTOR MECHANICS, AND ALLIED WORKERS LOCAL UNION 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) (GRANTED).

(RE: ISLINGTON CHRYSLER PLYMOUTH (1963) LIMITED,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

THE RESPONDENT SUBMITS THAT THE APPLICATION SHOULD BE DISMISSED ON THE GROUNDS THAT THE APPLICANT DOROTHY HALL, WHO IS EMPLOYED AS A CONTROL TOWER OPERATOR, EXERCISES MANAGERIAL FUNCTIONS. THE RESPONDENT DOES NOT DISPUTE THE FACT THAT THE CLASSIFICATION OF CONTROL TOWER OPERATOR WAS NOT EXCLUDED FROM THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN ITS CERTIFICATE DATED JUNE 4TH, 1962. THE RESPONDENT ALLEGES, HOWEVER, THAT THE BOARD IN THE

ELGIN MOTORS COMPANY LIMITED CASE (BOARD FILE No. 4374-62-R) EXCLUDED THE CONTROL OPERATOR FROM THE BARGAINING UNIT ON THE BASIS THAT THE PERSON EMPLOYED IN THAT CAPACITY EXERCISED MANAGERIAL FUNCTIONS. THE RESPONDENT ARGUES THAT SINCE THE APPLICANT IS EMPLOYED IN THE SAME CAPACITY WITH THE INTERVENER COMPANY THE FINDING OF THE BOARD IN THE ELGIN MOTORS COMPANY LIMITED CASE (SUPRA) SHOULD APPLY IN THE PRESENT APPLICATION.

THE BOARD NOTES THAT IN THE ELGIN MOTORS COMPANY LIMITED CASE (SUPRA) THE PARTIES AGREED TO THE EXCLUSION OF THE CONTROL OPERATOR FROM THE BARGAINING UNIT. NO FINDING WAS MADE BY THE BOARD WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF THE CONTROL OPERATOR. SINCE THE RESPONDENT TOOK NO OBJECTION TO THE INCLUSION OF THE CONTROL TOWER OPERATOR IN THE BARGAINING UNIT AT THE TIME OF THE CERTIFICATION APPLICATION IT CANNOT NOW CLAIM THAT THE PERSON EMPLOYED IN THIS POSITION HAS MANAGERIAL AUTHORITY.

THE RESPONDENT ALSO SUBMITS THAT SINCE THE BOARD DISMISSED A PREVIOUS APPLICATION FOR TERMINATION OF BARGAINING RIGHTS BY THE SAME APPLICANT ON JUNE 22ND, 1964, THAT APPLICATION SHOULD ACT AS A BAR TO THE PRESENT APPLICATION. IN SUPPORT OF ITS SUBMISSION THE RESPONDENT ARGUES THAT AN ANALOGY SHOULD BE DRAWN TO THE BOARD'S PRACTICE OF BARRING A SECOND CERTIFICATION APPLICATION BY THE SAME APPLICANT FOR A PERIOD OF SIX MONTHS WHEN THE APPLICANT HAS BEEN UNSUCCESSFUL IN A REPRESENTATION VOTE. WE FAIL TO APPRECIATE THE ANALOGY DRAWN BY THE RESPONDENT SINCE NO REPRESENTATION VOTE WAS TAKEN IN THE FIRST TERMINATION APPLICATION. WE WOULD ADD, HOWEVER, THAT IN THE EXERCISE OF ITS DISCRETION THE BOARD WILL NOT ENTERTAIN A SECOND APPLICATION FOR TERMINATION BY THE SAME APPLICANT WHERE THERE IS A CURRENT AND ACTIVE BARGAINING RELATIONSHIP (SEE CANADIAN SEALRIGHT CO. LTD. CASE (1959) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1955-59, ¶16,157; C.L.S. 76-665). IN THE INSTANT CASE, IT IS CLEAR THAT SUCH A RELATIONSHIP DOES NOT EXIST. ALTHOUGH THE RESPONDENT HAS HAD AMPLE OPPORTUNITY TO DEMONSTRATE ITS ABILITY TO BARGAIN, IT HAS NOT BEEN ABLE TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE INTERVENER COMPANY. IN THESE CIRCUMSTANCES THE BOARD IS OF THE OPINION THAT THE PREVIOUS TERMINATION APPLICATION SHOULD NOT BE A BAR TO THIS APPLICATION.

HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF ISLINGTON CHRYSLER PLYMOUTH (1963) LIMITED IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

INDEXED ENDORSEMENT - LOCKOUT UNLAWFUL

9203-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. ALGER PRESS LIMITED (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT AN ALLEGED LOCKOUT WHICH WAS CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.



THE BOARD FINDS THAT ALL RELEVANT TIMES THE APPLICANT AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING ALL MECHANICAL EMPLOYEES OF THE COMPOSING ROOM OF THE RESPONDENT SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN.

ARTICLE 18 OF THE COLLECTIVE AGREEMENT READS IN PART AS FOLLOWS:-

18.01 JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IS DEFINED AS INCLUDING ALL COMPOSING ROOM WORK AND INCLUDES CLASSIFICATIONS SUCH AS - HAND COMPOSITORS; TYPESETTING MACHINE OPERATORS, MAKE-UP MEN, BANK MEN, PROOFPRESS OPERATORS, STONEMEN, MACHINISTS FOR TYPESETTING MACHINES, OPERATORS AND MACHINISTS ON ALL MECHANICAL DEVICES WHICH CAST OR COMPOSE TYPE, SLUGS, OPERATORS OF TAPE PERFORATOR MACHINES AND RECUTTING UNITS FOR USE IN COMPOSING OR PRODUCING TYPE; OPERATORS OF ALL PHOTOTYPESETTING MACHINES SUCH AS (FOTOSETTER; PHOTON, LINOFILM, MONOPHOTO, FILMOTYPE, TYPRO AND HADEGO).

18.02 IT IS AGREED BY THE UNION THAT THE PRESENT METHOD OF OPERATION BY THE COMPANY SHALL CONTINUE FOR THE LIFE OF THIS AGREEMENT.

THE BOARD FURTHER FINDS THAT DURING NEGOTIATIONS FOR A RENEWAL OF THE COLLECTIVE AGREEMENT AND PRIOR TO A CONCILIATION BOARD MAKING ITS REPORT, THE RESPONDENT, ON OR ABOUT THE 10TH DAY OF AUGUST, 1964, CONTRACTED OUT THE BULK OF ITS COMPOSING ROOM WORK TO OTHER COMPANIES. THE RESPONDENT DISMISSED ALL OF ITS EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT AS OF THAT DATE.

IT WAS NOT ARGUED AND WE ARE THEREFORE NOT CALLED UPON TO FIND WHETHER THE WORK CONTRACTED OUT IN THE CIRCUMSTANCES OF THIS CASE CONSTITUTED OR CONTRIBUTED TO A LOCKOUT OF EMPLOYEES OF THE RESPONDENT.

HOWEVER, WHILE THE BULK OF THE COMPOSING ROOM WORK WAS PERFORMED BY OTHER COMPANIES, THERE REMAINED CERTAIN COMPOSING ROOM WORK WHICH WAS PERFORMED BY THE RESPONDENT ON ITS PREMISES BY PERSONS WHO WERE NOT MEMBERS OF THE APPLICANT AND NOT COVERED BY THE COLLECTIVE AGREEMENT REFERRED TO ABOVE.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE WORK PERFORMED IN THE COMPOSING ROOM BY PERSONS NOT COVERED BY THE COLLECTIVE AGREEMENT WAS WORK FALLING WITHIN THE JURISDICTION OF THE APPLICANT AS DEFINED BY ARTICLE 18 OF THE COLLECTIVE AGREEMENT.

THE BOARD FURTHER FINDS THAT THE COMPOSING ROOM WORK PERFORMED BY SUCH PERSONS WAS SUBSTANTIAL AND WAS PERFORMED ON A REGULAR BASIS.



THE BOARD THEREFORE FINDS THAT THE RESPONDENT FAILED TO CONTINUE TO EMPLOY CERTAIN OF ITS EMPLOYEES WHO WERE COVERED BY THE COLLECTIVE AGREEMENT IN ORDER TO AVOID THE NECESSITY OF BARGAINING FOR A RENEWAL OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT, ON OR ABOUT THE 10TH DAY OF AUGUST, 1964, ENGAGED IN A LOCKOUT IN THAT IT REFUSED TO CONTINUE TO EMPLOY A NUMBER OF ITS EMPLOYEES WITH A VIEW TO AVOIDING THE NEGOTIATION OF A COLLECTIVE AGREEMENT WITH THE APPLICANT THEREBY PREVENTING THE APPLICANT AND ITS EMPLOYEES FROM EXERCISING THE RIGHT OF COLLECTIVE BARGAINING WITH RESPECT TO THE WORK WHICH WAS BEING PERFORMED BY THE RESPONDENT IN ITS COMPOSING ROOM, AND THAT THE LOCKOUT ENGAGED IN BY THE RESPONDENT WAS UNLAWFUL."

#### SPECIAL INDEXED ENDORSEMENT - CERTIFICATION

4491-62-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) V. COBALT REFINERY LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

ON DECEMBER 13, 1962 THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE DIRECTION. THE TERMS OF THE DIRECTION ESTABLISHED THE ELIGIBILITY OF VOTERS READS AS FOLLOWS:

ALL EMPLOYEES OF THE RESPONDENT AT ITS REFINERY IN COLEMAN TOWNSHIP, SAVE AND EXCEPT FOREMEN AND SHIFT BOSSES, PERSONS ABOVE THE RANK OF FOREMAN AND SHIFT BOSS, LABORATORY CHEMISTS, LABORATORY TECHNICIANS AND ASSISTANTS, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

ON FEBRUARY 13, 1963, THE BOARD HELD THAT CERTAIN NAMED EMPLOYEES WHO "HAD BEEN LAID OFF FROM THEIR EMPLOYMENT AT THE TIME MATERIAL TO THEIR ELIGIBILITY TO VOTE, WERE NOT ELIGIBLE VOTERS". THE INTERVENER THEN REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF FEBRUARY 13, 1963. SUBSEQUENTLY, ON AUGUST 2, 1963, THE BOARD ISSUED THE FOLLOWING DECISION WHICH, THROUGH AN OVERSIGHT, WAS NOT REPORTED IN THE AUGUST 1963 MONTHLY REPORT OF THE ONTARIO LABOUR RELATIONS BOARD:-

"ON THE BASIS OF ALL THE CIRCUMSTANCES IN THIS CASE, INCLUDING THE FACT THAT THE EMPLOYEES IN QUESTION WERE ORIGINALLY LAID OFF FOR WHAT MUST BE FOUND TO HAVE BEEN A DEFINITE PERIOD OF REASONABLY SHORT DURATION, ALTHOUGH THIS PERIOD WAS LATER EXTENDED, AND THE FACT THAT IT WAS ANTICIPATED BY ALL THE PARTIES THAT THESE PERSONS WOULD HAVE RETURNED TO WORK BY THE TIME OF THE VOTE, WE ARE CONSTRAINED TO FIND THAT G. BEESON, N. DUPUIS, N. ENO, D. HUNT, R. LEMOINE, L. LEGAULT, AND L. WELLAR WERE ELIGIBLE VOTERS AND THAT THEIR BALLOTS SHOULD BE COUNTED.

IT WAS ARGUED BY THE REPRESENTATIVE FOR THE APPLICANT THAT THE VOTER'S LIST CANNOT BE CHALLENGED AFTER COMMENCEMENT OF THE BALLOTING. WE FAIL TO FIND ANY MERIT IN THIS ARGUMENT AND IT IS CONTRADICTED BY LONG-ESTABLISHED PRACTICE TO THE CONTRARY.

WE FIND THE CIRCUMSTANCES OF THIS CASE QUITE DIFFERENT FROM THOSE WHICH EXISTED IN THE RIX-ATHABASCA CASE (ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, JULY 1961, P. 127). OUR DECISION IN THIS CASE IS THEREFORE NOT TO BE TAKEN AS IN ANY WAY DEPARTING FROM THE REASONING OF THE BOARD IN THE LATTER CASE.

IN THE RESULT, THE BOARD'S DECISION OF FEBRUARY 13TH, 1963, IN SO FAR AS IT APPLIES TO THE ABOVE-NAMED PERSONS, IS REVOKED. THE SEGREGATED BALLOTS CAST BY THESE PERSONS ARE, THEREFORE, TO BE COUNTED."

#### SPECIAL ENDORSEMENTS IN CONCILIATION APPLICATIONS

7810-63-C: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ROCK WATER IRON PRODUCTS (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON NOVEMBER 19, 1963, UNITED STEEL WORKERS OF AMERICA WERE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF C. & R. METAL PRODUCTS LIMITED, HEREINAFTER REFERRED TO AS "C. & R. METALS", AT ITS SUDBURY PLANT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. DURING THE FIRST WEEK OF NOVEMBER, 1963, C. & R. METALS RECEIVED FROM ITS AUDITORS THE FINANCIAL STATEMENT FOR THE SIX-MONTH PERIOD ENDING SEPTEMBER 30, 1963, SHOWING A PROFIT OF \$241.00 FOR THE SIX-MONTH PERIOD. THE FOLLOWING WEEK A CONTRACT WAS DRAWN UP, AND EXECUTED ON OR ABOUT NOVEMBER 15, 1963, BETWEEN THE COMPANY AND CHARLES E. ROCHELEAU, WHO IS DESCRIBED IN THE CONTRACT AS "CARRYING ON BUSINESS IN THE CITY OF SUDBURY AS ROCK WATER IRON PRODUCTS", HEREINAFTER REFERRED TO AS "ROCK WATER", WHEREBY C. & R. METALS AGREED TO "EMPLOY" ROCHELEAU TO MANUFACTURE AND SUPPLY ALL OF ITS MINE HARDWARE "WHICH IS TO BE MADE FOR THE COMPANY ON AND AFTER THE DATE OF THESE PRESENTS", NAMELY NOVEMBER 15, 1963. THE TERMS OF THIS CONTRACT WERE THAT C. & R. METALS WOULD MAKE AVAILABLE TO ROCHELEAU THE MANUFACTURING EQUIPMENT AT ITS PLANT; IT WOULD SUPPLY ALL METAL AND METALLIC PRODUCTS HE REQUIRED IN THE SUPPLY AND MANUFACTURE OF MINE HARDWARE; AND IT WOULD KEEP ALL MACHINES IN GOOD WORKING ORDER. ROCHELEAU AGREED TO MANUFACTURE AND SUPPLY ALL MINE HARDWARE REQUIRED BY C. & R. METALS AND THAT ALL MINE HARDWARE MANUFACTURED ON THE PREMISES OF C. & R. METALS WOULD BE MADE FOR THE FULL USE OF C. & R. METALS AND FOR "NO-ONE" ELSE. HE ALSO AGREED TO "EMPLOY ALL LABOUR REQUIRED AND TO PAY ALL WAGES, WORKMEN'S COMPENSATION, UNEMPLOYMENT INSURANCE AND OTHER ASSESSMENTS PAYABLE TO SUCH LABOUR AND EXPENDED IN THE MANUFACTURE AND SUPPLY OF SUCH MINE HARDWARE". ROCHELEAU WAS TO RECEIVE FOR HIS EFFORTS "COST PLUS AND TEN PER CENT" (SIC). THE AGREEMENT CONTAINS TWO PARAGRAPHS RELATING TO ITS DURATION:

IT IS MUTUALLY AGREED THAT THIS AGREEMENT MAY BE CANCELLED BY MUTUAL CONSENT OF THE PARTIES AT ANY TIME DURING THE CURRENCY HEREOF OR BY ONE OF THE PARTIES GIVING TO THE OTHER TWO MONTHS' WRITTEN NOTICE OF SUCH CANCELLATION.

THIS AGREEMENT SHALL REMAIN IN EFFECT FOR A PERIOD OF ONE YEAR FROM THE DATE HEREOF AND SHALL CONTINUE IN EFFECT FROM YEAR TO YEAR THEREAFTER UNLESS TERMINATED BY EITHER OR BOTH OF THE PARTIES IN ACCORDANCE WITH THE ABOVE PROVISIONS.

AT THE HEARING OF THE INSTANT APPLICATION, COUNSEL FOR THE TWO PARTIES FILED AN AGREED STATEMENT OF FACTS WHICH SETS OUT IN PART THAT "CHARLES E. ROCHELEAU IS PRESIDENT, DIRECTOR AND MAJORITY SHAREHOLDER OF C. & R. METAL PRODUCTS LIMITED AND IS THE SAME PERSON AS THE CHARLES E. ROCHELEAU REFERRED TO IN "THE AGREEMENT OUTLINED ABOVE. A DECLARATION, PRESUMABLY UNDER THE PARTNERSHIP REGISTRATION ACT, R.S.O. 1960, c. 289, WAS MADE BY CHARLES E. ROCHELEAU ON DECEMBER 20, 1963, THAT HE WAS CARRYING ON BUSINESS UNDER THE NAME ROCK WATER IRON PRODUCTS AND THAT THE BUSINESS HAS SUBSISTED SINCE NOVEMBER 15, 1963. THE DECLARATION WAS REGISTERED IN THE REGISTRY OFFICE FOR THE DISTRICT OF SUDBURY ON DECEMBER 24, 1963.

SINCE THE APPLICANT UNION WAS CERTIFIED ON NOVEMBER 19, 1963, IT IS OBVIOUS THAT C. & R. METALS MUST HAVE RECEIVED NOTICE OF THE APPLICATION FOR CERTIFICATION AT LEAST TWO WEEKS BEFORE THAT DATE. IMMEDIATELY FOLLOWING THE ISSUE OF THE BOARD'S DECISION IN THIS CERTIFICATION PROCEEDING, THE UNION, ON NOVEMBER 20, GAVE NOTICE OF ITS DESIRE TO BARGAIN. A NEGOTIATION MEETING WAS HELD ON DECEMBER 2, 1963, AND WE MUST INFER FROM THE AGREED STATEMENT OF FACTS IN THE INSTANT PROCEEDINGS THAT NO MENTION WAS MADE AT THAT TIME ABOUT THE ARRANGEMENT THAT HAD ALREADY BEEN ENTERED INTO BETWEEN C. & R. METALS AND ROCHELEAU.

ALTHOUGH THE AGREEMENT BETWEEN ROCHELEAU AND C. & R. METALS STIPULATE THAT ROCHELEAU WAS TO "MANUFACTURE AND SUPPLY ALL OF ITS MINE HARDWARE WHICH IS TO BE MADE FOR THE COMPANY ON AND AFTER THE DATE OF THESE PRESENTS", NAMELY, NOVEMBER 15, 1963, NEVERTHELESS THE AGREED STATEMENT OF FACTS DISCLOSES THAT ROCK WATER DID NOT COMMENCE OPERATIONS OR HIRE EMPLOYEES FOR THE PURPOSES OF THE AGREEMENT UNTIL DECEMBER 27, 1963. ALL EMPLOYEES OF C. & R. METALS, "FROM AND INCLUDING THE FOREMAN DOWN" WERE LAID OFF BY THAT COMPANY ON DECEMBER 23 AND 24, AND WERE PAID UP, GIVEN THEIR VACATION PAY AND THEIR UNEMPLOYMENT INSURANCE BOOKS AT THAT TIME. THE STATEMENT ALSO DISCLOSES THAT THE EMPLOYEES OF ROCK WATER ARE SUBSTANTIALLY THE SAME AS THOSE PREVIOUSLY EMPLOYED BY C. & R. METALS "FROM THE FOREMAN DOWN", "ALL HIGHER SUPERVISION ABOVE THE FOREMAN INCLUDING THE PLANT MANAGER BEING CARRIED ON BY C. & R. METAL PRODUCTS LIMITED EMPLOYEES".

ON APRIL 28, 1964, THE APPLICANT UNION NOTIFIED ROCK WATER OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, TAKING THE POSITION THAT ROCK WATER WAS A SUCCESSOR TO C. & R. METAL PRODUCTS LIMITED UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. ROCK WATER REFUSED TO MEET, CLAIMING THAT IT WAS NOT THE PURCHASER OF THE BUSINESS OF C. & R. METAL PRODUCTS LIMITED WITHIN THE MEANING OF SECTION 47A OF THE ACT.

AT THE HEARING OF THIS APPLICATION, COUNSEL FOR APPLICANT MADE TWO ALTERNATIVE SUBMISSIONS:



- (1) THAT NOTWITHSTANDING THE CONTRACT BETWEEN C. & R. METALS AND ROCHELEAU, C. & R. METALS CONTINUED TO BE THE EMPLOYER OF THE EMPLOYEES CONCERNED IN THIS APPLICATION; OR
- (11) THAT ROCHELEAU (ROCK WATER) IS THE SUCCESSOR OF C. & R. METALS.

HE CONCEDED THAT IF THE BOARD WERE TO ACCEPT THE FIRST OF HIS SUBMISSIONS, THIS APPLICATION SHOULD BE DISMISSED. HE CITED IN SUPPORT OF THE FIRST OF HIS SUBMISSIONS, THE REASONS FOR DECISION OF THE MAJORITY OF A BOARD OF ARBITRATION IN IN RE CANADIAN GUARDS ASSOCIATION AND ROTHMAN'S OF PALL MALL CANADA LIMITED, DATED NOVEMBER 12, 1963. THE BOARD CONSISTED OF HIS HONOUR JUDGE WALTER LITTLE, CHAIRMAN, W. S. ROSE, UNION NOMINEE, AND J. P. SANDERSON, COMPANY NOMINEE, THE LATTER DISSENTING. COUNSEL FOR THE RESPONDENT CONTENDED THAT THE FACTS OF THE INSTANT CASE ARE DISTINGUISHABLE FROM THE FACTS IN THE ROTHMAN CASE.

THERE IS NOTHING IN THE AGREEMENT BETWEEN C. & R. METALS AND ROCHELEAU TO PREVENT C. & R. METALS UNILATERALLY, ON VERY SHORT NOTICE, FROM REASSERTING ITS RIGHT TO OPERATE THE BUSINESS IN EVERY RESPECT AS IT WAS DOING BEFORE THE ARRANGEMENT BETWEEN C. & R. METALS AND ROCHELEAU WAS ENTERED INTO. IN ADDITION, ROCHELEAU IS NOT A FREE AGENT TO SELL THE MINE HARDWARE PRODUCED TO ANY OUTSIDER. IN EFFECT, HE APPEARS TO BE OCCUPYING THE PREMISES AND USING THE EQUIPMENT AND MATERIALS OF C. & R. METALS TO RENDER A SERVICE TO C. & R. METALS IN THE MANUFACTURE OF ITS PRODUCTS. HE WAS "EMPLOYED" FOR THE PURPOSE OF THE ARRANGEMENT SUBSTANTIALLY THE SAME EMPLOYEES "FROM THE FOREMAN DOWN" AS WERE PREVIOUSLY EMPLOYED BY C. & R. METALS, AND, IN SO FAR AS HIGHER SUPERVISION IS CONCERNED, AS THE PARTIES AGREED, ALL HIGHER SUPERVISION, INCLUDING THE PLANT MANAGER, WAS THAT OF C. & R. METALS. HAVING REGARD TO THESE CIRCUMSTANCES, AS WELL AS THE TIMING OF THE ARRANGEMENT ENTERED INTO BETWEEN C. & R. METALS AND ROCHELEAU, THE TERMS OF THAT ARRANGEMENT AND THE RELATIONSHIP BETWEEN C. & R. METALS AND ROCHELEAU, WE ARE NOT PERSUADED THAT C. & R. METALS RELINQUISHED MANAGEMENT AND CONTROL OF THE MINE HARDWARE MANUFACTURING OPERATIONS OF ITS BUSINESS TO ROCHELEAU. INDEED, WE FEEL IMPELLED TO FIND THAT IT RETAINED SUCH CONTROL, WITH ROCHELEAU BECOMING, IN FACT, A LINK IN THE C. & R. METALS MANAGEMENT CHAIN. THIS CONCLUSION IS BOLSTERED BY THE FACT THAT THE MAIN REASON GIVEN FOR THE ARRANGEMENT BEING ENTERED INTO BETWEEN C. & R. METALS AND ROCHELEAU IS THE SMALL PROFIT MADE BY C. & R. METALS FOR THE SIX-MONTH PERIOD ENDING SEPTEMBER 30, 1963; NO EXPLANATION WAS VOUCHSAFED AS TO HOW C. & R.'S FINANCIAL POSITION WOULD BE ENHANCED BY THE NEW ARRANGEMENT FOR THE MANUFACTURE OF ITS MINE HARDWARE. IF WE WERE TO HOLD THAT AN EMPLOYER COULD AVOID RESPONSIBILITY FOR BARGAINING WITH A TRADE UNION THAT HAS BEEN CERTIFIED AS BARGAINING REPRESENTATIVE FOR ITS EMPLOYEES BY AN ARRANGEMENT AND IN CIRCUMSTANCES SUCH AS IS OUTLINED ABOVE, WE WOULD BE SAYING THAT EVERY CERTIFICATE ISSUED BY THIS BOARD, AND, INDEED EVERY COLLECTIVE AGREEMENT ENTERED INTO BETWEEN AN EMPLOYER AND A TRADE UNION, COULD BE RENDERED NULL AND VOID BY A VERY SIMPLE DEVICE. THE INTENT OF THE LEGISLATION WOULD THEN BE COMPLETELY FRUSTRATED.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, WE FIND THAT C. & R. METALS REMAINS THE EMPLOYER OF THE EMPLOYEES CONCERNED IN THIS APPLICATION.



THE REQUEST OF THE APPLICANT THAT CONCILIATION SERVICES BE MADE AVAILABLE TO IT AND TO ROCK WATER IS THEREFORE DENIED. IN VIEW OF THE CONCLUSION AT WHICH WE HAVE ARRIVED, IT IS UNNECESSARY FOR US TO DEAL WITH THE SECOND SUBMISSION OF THE APPLICANT.

WE WISH TO MAKE IT CLEAR THAT, IN ARRIVING AT OUR CONCLUSION IN THIS CASE, NONE OF THE FACTORS THAT WE HAVE TAKEN INTO ACCOUNT, STANDING BY ITSELF, IS CONTROLLING. OUR DECISION RESTS ON THE TOTALITY OF THE EVIDENCE BEFORE US."

9268-64-C: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. LAROCHE REALTY LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AND NO ONE APPEARING FOR THE RESPONDENT.

A TELEGRAM FROM THE APPLICANT DATED SEPTEMBER 29TH, 1964 REQUESTING LEAVE TO WITHDRAW THIS APPLICATION WAS RECEIVED BY THE BOARD AT 10:15 A. ON SEPTEMBER 30TH. HAVING REGARD TO THE FACT THAT NO ONE APPEARED FOR THE APPLICANT AT THE HEARING AND HAVING REGARD TO THE FACT THAT THE TELEGRAM WAS NOT RECEIVED UNTIL AFTER THE HEARING, THIS APPLICATION IS DISMISSED."

STATISTICAL TABLES FOR SEPTEMBER 1964

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	SEPTEMBER 1964	1ST 6 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	86	440	378
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	48	43
III. DECLARATION OF SUCCESSOR STATUS	1	2	18
IV. CONCILIATION SERVICES	77	603	613
V. DECLARATION THAT STRIKE UNLAWFUL	5	26	25
VI. DECLARATION THAT LOCK-OUT UNLAWFUL	-	5	2
VII. CONSENT TO PROSECUTE	6	48	96
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	20	88	80
X. MISCELLANEOUS	4	11	6
	<hr/>	<hr/>	<hr/>
TOTAL	202	1271	1261
	<hr/>	<hr/>	<hr/>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	SEPTEMBER 1964	1ST 6 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	93	546	539

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	SEPTEMBER 1964	1ST 6 MONTHS OF 1964-65	FISCAL YEAR 1963-64
I. CERTIFICATION	79	424	405
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	55	60
III. DECLARATION OF SUCCESSOR STATUS	-	4	5
IV. CONCILIATION SERVICES	89	662	631
V. DECLARATION THAT STRIKE UNLAWFUL	7	24	24
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	2	5	1
VII. CONSENT TO PROSECUTE	15	46	89
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	26	91	74
IX. MISCELLANEOUS	1	9	3
TOTAL	222	1320	1302

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
SEPTEMBER 1964	1ST 6 MONTHS 1964-65	FISCAL YEAR 1963-64	SEPTEMBER 1964	1ST 6 MONTHS 1964-65	FISCAL YR. 1963-64

I. CERTIFICATION

GRANTED	68	313	287	2079	10917	8075
DISMISSED	8	75	72	316	4249	2453
WITHDRAWN	3	36	46	50	1905	621
TOTAL	79	424	405	2445	17071	11149

II. TERMINATION  
OF BARGAINING  
RIGHTS

GRANTED	1	38	38	26	370	1128
DISMISSED	2	15	20	6	279	490
WITHDRAWN	-	2	2	-	82	85
TOTAL	3	55	60	32	731	1703

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

	NUMBER OF APPLICATIONS		
	SEPTEMBER 1964	1ST 6 MONTHS FISCAL YEAR 1964-65	1963-64
III. <u>CONCILIATION SERVICES*</u>			
REFERRED	81	611	591
DISMISSED	2	24	11
WITHDRAWN	6	27	29
	<hr/>	<hr/>	<hr/>
TOTAL	89	662	631
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>
IV. <u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
GRANTED	-	8	3
DISMISSED	1	4	3
WITHDRAWN	6	12	18
	<hr/>	<hr/>	<hr/>
TOTAL	7	24	24
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>
V. <u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
GRANTED	1	1	-
DISMISSED	-	1	-
WITHDRAWN	1	3	1
	<hr/>	<hr/>	<hr/>
TOTAL	2	5	1
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>
VI. <u>CONSENT TO PROSECUTE</u>			
GRANTED	3	7	20
DISMISSED	2	10	7
WITHDRAWN	10	29	62
	<hr/>	<hr/>	<hr/>
TOTAL	15	46	89
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>

\* INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1964	1ST 6 MONTHS OF FISCAL YEAR 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	13	12
POST-HEARING VOTE	6	14	29
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	4	8
POST-HEARING VOTE	2	30	31
BALLOTS NOT COUNTED	-	-	1
TOTAL	11	61	81

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1964	1ST 6 MONTHS OF FISCAL YEAR 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	1	8	20
TOTAL	1	8	25

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



OCTOBER, 1964



ONTARIO

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING OCTOBER 1964

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

8476-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. JOHN CLARK BUILDING ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF COCHRANE NORTH OF THE 50TH PARALLEL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(7 EMPLOYEES IN THE UNIT).

9062-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. F. W. WOOLWORTH CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT PETERBOROUGH, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(43 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE BAKERY MANAGER AT ITS (THE RESPONDENT'S) STORE NO. 284 IS EXCLUDED FROM THE BARGAINING UNIT.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT BEATRICE MACKEY EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNIT.

HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED SEPTEMBER 2ND, 1964, THE BOARD FINDS THAT RUTH DAVIDSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"WHILE I CONCUR WITH THE MAJORITY IN THEIR OTHER DETERMINATIONS, I DISSENT WITH RESPECT TO THE FINDING OF THE MAJORITY HEREIN THAT MRS. RUTH A. DAVIDSON, SUPERVISOR OF PERSONNEL AT THE CHEMONG ROAD STORE, IS AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

THE EVASIVE AND CONTRADICTORY STATEMENTS OF HER RECORDED TESTIMONY IMPELS ME TO CONCLUDE THAT MRS. DAVIDSON IS NOT A CREDIBLE WITNESS. ACCORDINGLY, ON THE BASIS OF WHAT I CONSIDER TO BE THE CREDIBLE EVIDENCE IN THIS MATTER, I FIND THAT MRS. DAVIDSON DOES EXERCISE MANAGERIAL FUNCTIONS AND I WOULD THEREFORE EXCLUDE HER FROM THE BARGAINING UNIT."



9256-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (LOCAL LODGE No. 1031)  
(APPLICANT) V. THE HERBERT MORRIS CRANE & HOIST COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ENGINEERING AND SERVICE, AND OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"LOCAL 175C OF THE INTERNATIONAL CHEMICAL WORKERS UNION DID NOT INTERVENE IN THE APPLICATION BUT INFORMED THE BOARD IN WRITING THAT IT NO LONGER CLAIMS TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT. IN THE RESULT, THIS APPLICATION MAY BE DISPOSED WITHOUT REFERENCE TO ANY BARGAINING RIGHTS PREVIOUSLY HELD BY THIS UNION."

9294-64-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION - A.F.L.-C.I.O. - C.L.C. (APPLICANT) V. VALHALLA INN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS INN AT ISLINGTON, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, HEAD BARTENDER, HEAD RECEPTIONIST, CONFERENCE COUNSELLOR, FIRST MAITRE D', SECOND MAITRE D', HOUSEKEEPER, HEAD CHEF, CONTROLLER, ACCOUNTING AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (68 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9299-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HAMILTON WIRE PRODUCTS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

9322-64-R: UNITED PACKINGHOUSE, FOOD & ALLIED WORKERS (APPLICANT) V. CHOICE CUT-UP CHICKEN (1948) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AURORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (113 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SIX NAMED EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT AND THAT ONE NAMED EMPLOYEE IS EXCLUDED FROM THE BARGAINING UNIT).

9328-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE FOOD MANAGEMENT DIVISION OF THE RESPONDENT LOCATED AT VILLA MARIA, 2856 RIVERSIDE DRIVE WEST, WINDSOR, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CHEF AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

9365-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. RULIFF GRASS CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THESSALON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FURTHER FINDS THAT THERE ARE NO EMPLOYEES OF THE RESPONDENT IN PARRY SOUND. THE BOARD FURTHER FINDS THAT THE RESPONDENT HAS ONLY ONE EMPLOYEE IN THE BOARD'S REGULAR SAULT STE. MARIE AREA. THE APPLICATION MUST THEREFORE BE DISMISSED IN SO FAR AS IT AFFECTS PARRY SOUND AND SAULT STE. MARIE."

9377-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF WESTON (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, AND ONE CONFIDENTIAL SECRETARY TO THE TOWN CLERK." (6 EMPLOYEES IN THE UNIT).

9378-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) v. NATIONAL HAULAGE LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9387-64-R: GENERAL TRUCK DRIVERS LOCAL UNION 938, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE LEVIS' PAPER FIBRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DORLING GARAGE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EFFECTIVE THE 15TH DAY OF JUNE 1963." (2 EMPLOYEES IN THE UNIT).

9408-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. ALCAN-COLONY CONTRACTING BY ALCAN-COLONY CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A THIRTY-FIVE MILE RADIUS FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9415-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. WILMOT'S DAIRY LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN IN THE EMPLOY OF THE RESPONDENT AT KINGSTON."  
(32 EMPLOYEES IN THE UNIT).

9418-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ELAN TOOL AND DIE LIMITED  
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED  
DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

9419-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA  
(APPLICANT) V. ACME TRANSPORT COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE  
UNIT).

9423-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AFL-CIO-  
CLC (APPLICANT) V. SAVILLE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE DISTRICT OF KENORA, SAVE  
AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN,  
OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (8 EMPLOYEES  
IN THE UNIT).

9424-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL-CIO  
CLC (APPLICANT) V. GIBSON BROS. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE UNITED CHURCH OF CANADA  
BUILDING, 85 ST. CLAIR AVENUE EAST, TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS  
ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR  
NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9435-64-R: INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O. C.L.C. (APPLICANT)  
V. ALBERTO-CULVER OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS  
ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

9436-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V.  
E. G. M. CAPE & COMPANY (1956) LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT  
IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON  
AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN  
AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN THIS CASE THE APPLICANT SEEKS AN AREA WHICH CONFLICTS



WITH TWO AREAS PREVIOUSLY SET BY THE BOARD. ONE OF THE TWO WAS SET HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT ON BEHALF OF ITS COBOURG LOCAL. IT NOW APPEARS THAT ANOTHER LOCAL OF THE APPLICANT, THE OSHAWA LOCAL, LAYS CLAIM TO AND IN FACT HAS COLLECTIVE AGREEMENTS COVERING A PORTION OF THE AREA OVER WHICH THE COBOURG LOCAL CLAIMS JURISDICTION. THE JOB SITE AFFECTED BY THE PRESENT APPLICATION FALLS WITHIN THE AREA WHICH THE BOARD SET IN THE CASE INVOLVING THE COBOURG LOCAL. WHILE THE APPLICANT IN THIS CASE IS THE INTERNATIONAL, IT IS CLEAR THAT THE AREA PROPOSED IS THAT CLAIMED BY ITS OSHAWA LOCAL. THIS PARTICULAR AREA DOES NOT CONFORM TO A PREVIOUS AREA SET BY THIS BOARD FOR THE OSHAWA DISTRICT. IN A CASE HEARD THE SAME DAY AS THE PRESENT CASE, NAMELY, GEORGE WIMPEY & COMPANY LTD., BOARD FILE NO. 9440-64-R, THE BOARD REJECTED THE AREA PROPOSED BY THE APPLICANT IN THE PRESENT CASE AND RESTRICTED IT TO THE ONE PREVIOUSLY SET BY THE BOARD. THIS MORE RESTRICTED AREA WOULD NOT INCLUDE THE JOB SITE AFFECTED BY THE PRESENT APPLICATION.

HAVING REGARD TO THE ABOVE CONSIDERATIONS WE HAVE COME TO THE CONCLUSION THAT THE PROPER AREA IN THIS CASE IS THE ONE SET BY THE BOARD IN THE CASE INVOLVING THE JURISDICTIONAL AREA OF THE COBOURG LOCAL OF THE APPLICANT."

9437-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE KELVIN-THOMPSON CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

9438-64-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. ED STEINFIELD HAULAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9440-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GEORGE WIMPEY & CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS ALREADY SET AN AREA FOR THE OSHAWA DISTRICT. ONE



OF THE REASONS WHICH INFLUENCED THE BOARD IN DETERMINING THE BOUNDARIES OF THAT AREA WAS THE LACK OF UNIFORMITY ON THE AREA QUESTION FOUND IN THE COLLECTIVE AGREEMENTS OF VARIOUS UNIONS AND EMPLOYERS IN THE OSHAWA DISTRICT. FACED WITH THAT DIFFICULTY THE BOARD CHOSE A MAXIMUM AREA WHICH APPEARED TO BE COMMON TO ALL COLLECTIVE AGREEMENTS THEN BEFORE THE BOARD.

THE LACK OF UNIFORMITY HAS CONTINUED. THUS FOR EXAMPLE THE AREA PROPOSED BY THE APPLICANT AND FOR WHICH IT HAS AN AGREEMENT WITH THE OSHAWA AND DISTRICT CONSTRUCTION EXCHANGE DIFFERS FROM THAT FOUND IN THE COLLECTIVE AGREEMENT BETWEEN LOCAL 597 OF THE HOD CARRIERS AND THE OSHAWA AND DISTRICT CONSTRUCTION EXCHANGE. THE AREA SET OUT IN THIS LAST MENTIONED AGREEMENT DIFFERS IN TURN FROM THAT APPEARING IN THE AGREEMENT BETWEEN LOCAL 20 OF THE BRICKLAYERS AND THE SAME EXCHANGE. IN THESE CIRCUMSTANCES WE CAN FIND NO REASON FOR THE DEPARTING FROM THE AREA PREVIOUSLY SET BY THE BOARD."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IT WAS POINTED OUT TO THE PARTIES AT THE HEARING THAT IF THEY WERE UNABLE TO RESOLVE ANY QUESTION RESPECTING THE INCLUSION OR EXCLUSION OF SPECIFIC PERSONS IN THE BARGAINING UNIT, IT WAS OPEN TO EITHER PARTY TO APPLY TO THE BOARD FOR RELIEF UNDER THE PROVISIONS OF SECTION 79 (2) OF THE LABOUR RELATIONS ACT."

9441-64-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42 - L (APPLICANT) V. THE MERCHANTS PRINTING COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS CONSIDERED THE TESTIMONY OF HARRY ASHWORTH, THE PRESIDENT OF THE APPLICANT LOCAL 42-L, AND THE TESTIMONY OF RICHARD LINDLEY, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT, WITH RESPECT TO THE MERGER OF THE AMALGAMATED LITHOGRAPHERS OF AMERICA AND THE INTERNATIONAL PHOTO ENGRAVERS UNION TO FORM THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION. THE BOARD HAS ALSO EXAMINED THE CONSTITUTION AND LAWS OF THE MERGED ORGANIZATION WHICH WAS FILED AT THE HEARING AND OTHER DOCUMENTARY EVIDENCE FILED SUBSEQUENT TO THE HEARING AT THE REQUEST OF THE BOARD. HAVING REGARD TO ALL THE EVIDENCE BEFORE US, WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT."

9443-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADIAN TRACTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY

EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

9444-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ROTI WOOD AND METAL PRODUCTS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FERGUS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

9448-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS' UNION OF AMERICA (APPLICANT) V. MOLAND BROS. (LAKEHEAD) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

9449-64-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. AMERICAN PANT COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

9451-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. GULTON INDUSTRIES (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GANANOQUE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT).

9452-64-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT DUNNVILLE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9464-64-R: LOCAL UNION #1940; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TRAUGOTT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD NO. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9477-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TRANS-CANADA BUILDING PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

9479-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. WINDSOR MEMORIAL PARK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GREEN LAWN MEMORIAL GARDENS, R. R. #2, OLDCASTLE, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPER-INTENDENT." (3 EMPLOYEES IN THE UNIT).

9483-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. KILMER VAN NOSTRAND LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ENGAGED IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND THOSE PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS MADE THE 8TH DAY OF JUNE, 1964." (8 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE ADMISSION OF THE RESPONDENT THAT BRIDGE CONSTRUCTION IS NOT COVERED BY A COLLECTIVE AGREEMENT TO WHICH THE RESPONDENT IS BOUND BETWEEN THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS. THE BOARD FURTHER NOTES THAT A REPRESENTATIVE OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, ONE OF THE UNIONS COMPRISING THE COUNCIL, CONCURS IN THIS INTERPRETATION. THE OTHER UNIONS FORMING THE COUNCIL, THOUGH DULY NOTIFIED OF THE APPLICATION, DID NOT INTERVENE."

9487-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. CARTER CARBURETOR OF CANADA LTD. (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, SALES STAFF, MANAGEMENT TRAINEES, EMPLOYEES IN THE INDUSTRIAL ENGINEERING DEPARTMENT (EXCEPT QUALITY CONTROL INSPECTORS), PLANT NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9498-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ELMWOOD MANUFACTURING CO. LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

9499-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ROCKWELL-STANDARD CORPORATION OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

A DOCUMENT HAVING BEEN FILED BEARING THE SIGNATURE OF A NUMBER OF PERSONS EXPRESSING OPPOSITION TO THE CERTIFICATION OF THE APPLICANT, THE BOARD, AFTER HEARING THE EVIDENCE IN SUPPORT OF THE DOCUMENT, CERTIFIED THE APPLICANT WITHOUT A REPRESENTATION VOTE FOR THE FOLLOWING REASONS:

"HAVING REGARD TO THE FACT THAT THERE IS NO EVIDENCE BEFORE THE BOARD CONCERNING THE ORIGATION AND PREPARATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, AND THE FACT THAT THERE IS TESTIMONY WITH RESPECT TO THE MANNER IN WHICH ONLY ONE OF THE SIGNATURES ON THE DOCUMENT WAS OBTAINED, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

9501-64-R: UNITED CEMENT, LIME AND GYPSUM WORKERS' INTERNATIONAL UNION (APPLICANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHAT IS COMMONLY KNOWN AS ITS HAGERSVILLE PLANT AND MINE, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, GRADUATE ENGINEERS IN TRAINING AND STOCK CONTROL CLERKS." (201 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT "GRADUATE ENGINEERS IN TRAINING AND STOCK CONTROL CLERKS" ARE TO BE EXCLUDED IN THOSE TERMS FROM THE BARGAINING UNIT."

9502-64-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SCALES & ROBERTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

9503-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)(APPLICANT) V. J. BROCKHOUSE & Co. (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT



FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."  
(52 EMPLOYEES IN THE UNIT).

9505-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 353  
(APPLICANT) V. VICTOR ELECTRICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (3 EMPLOYEES IN THE UNIT).

9507-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ST. CATHARINES AUTO WORKERS CREDIT UNION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENTS AT ST. CATHARINES, SAVE AND EXCEPT ASSISTANT MANAGER AND THOSE ABOVE THE RANK OF ASSISTANT MANAGER." (4 EMPLOYEES IN THE UNIT).

9520-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. KENNEDY ELECTRIC (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9523-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. EVERENE PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAP MEN, BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER. (3 EMPLOYEES IN THE UNIT).

9525-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. C. A. SCHARFE LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9529-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. SHER-CORR ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (5 EMPLOYEES IN THE UNIT).

9530-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. ATLAS ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (10 EMPLOYEES IN THE UNIT).

9532-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. IROQUOIS INDUSTRIAL CHEMICALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY EMPLOYEES, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

9533-64-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE U.S. (APPLICANT) V. DEE & CEE TOY CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF." (116 EMPLOYEES IN THE UNIT).

9543-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. ROBERT G. WELLS LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (19 EMPLOYEES IN THE UNIT).

9546-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. STEDS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT

IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE WAS FILED WITH THE BOARD A DOCUMENT CONTAINING FIVE SIGNATURES OF PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. THE PERSONS CONCERNED OBJECT TO THE APPLICATION. THIS DOCUMENT WAS NOT MAILED REGISTERED ON OR BEFORE THE TERMINAL DATE FOR THE APPLICATION AND WOULD NOT ORDINARILY BE ACCEPTED BY THE BOARD. ASSUMING BUT WITHOUT DECIDING THAT THE CIRCUMSTANCES IN THIS CASE WOULD WARRANT THE BOARD ACCEPTING THE LATE FILING OF THE DOCUMENT, IT IS CLEAR THAT NONE OF THE SIGNATURES APPEARING ON THE DOCUMENT CORRESPOND TO NAMES OF EMPLOYEES APPEARING ON THE LIST OF NAMES ON SCHEDULE A TO THE REPLY FILED BY THE RESPONDENT. THE REASON FOR THIS MAY BE THE FACT THAT THE LIST OF EMPLOYEES SUBMITTED BY THE RESPONDENT IS FIXED IN ACCORDANCE WITH THE BOARD'S REGULAR PRACTICE AS AT THE DATE OF MAKING OF THE APPLICATION. HOWEVER THAT MY BE, IT IS CLEAR THAT THE DOCUMENT CONTAINING THE FIVE SIGNATURES CANNOT AFFECT THE OUTCOME OF THIS APPLICATION SINCE FOR PURPOSES OF THE COUNT THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT IS DETERMINED AS OF THE DATE OF THE MAKING OF THE APPLICATION. IT SHOULD BE NOTED THAT THIS IS A CONSTRUCTION INDUSTRY CASE AND SECTION 92 (2) OF THE LABOUR RELATIONS ACT IS THUS APPLICABLE.

THE BOARD NOTES THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION CONTAINED NO RETURN POSTAL ADDRESS AND IT HAS THEREFORE NOT BEEN POSSIBLE TO ACKNOWLEDGE RECEIPT OF THE DOCUMENT, NOR WILL IT BE POSSIBLE TO INFORM THE SENDER OF THE BOARD'S DECISION."

9553-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. 804 (APPLICANT) V. MASTER ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS PROPOSED A SUBSTANTIALLY DIFFERENT AREA TO THE ONE WHICH THE BOARD USUALLY GRANTS, THE BOARD SEES NO REASON FOR DEPARTING FROM ITS REGULAR AREA AT THIS TIME."

9557-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. DAVE ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).



CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9370-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT)  
V. ROY CONSTRUCTION AND SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE  
FEDERAL BUILDING IN TIMMINS, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE  
RANK OF NON-WORKING FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL  
VACATION PERIOD." (55 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	55
NUMBER OF BALLOTS CAST	46
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	40
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN ITS APPLICATION THE APPLICANT PROPOSED AN "ALL EMPLOYEE" UNIT.  
AT THE HEARING IN THIS MATTER THE RESPONDENT, FOLLOWING THE SUBMISSION  
MADE IN ITS REPLY, URGED THE ADOPTION OF A UNIT DESCRIBED AS CARPENTERS,  
CARPENTERS' APPRENTICES AND CARPENTERS' HELPERS. THE APPLICANT OPOSED  
THIS DESCRIPTION BUT INDICATED IT WAS PREPARED TO CONSIDER THE EXCLUSION  
OF CERTAIN TRADES FROM THE "ALL EMPLOYEE" UNIT WHICH, IN EFFECT, WOULD  
HAVE MEANT A UNIT CONSISTING OF THE CLASSIFICATOONS PROPOSED BY THE  
RESPONDENT.

THE PRACTICE OF THE BOARD HAS BEEN NOT TO INCLUDE CARPENTERS'  
HELPERS IN THE REGULAR CARPENTERS CRAFT UNIT. AGAIN IT HAS NOT BEEN  
THE PRACTICE OF THE BOARD (ABSENT AGREEMENT OF THE PARTIES) IN "ALL  
EMPLOYEE" CONSTRUCTION INDUSTRY UNITS TO EXCEPT THEREFROM SPECIAL  
CLASSIFICATIONS OTHER THAN THOSE PERFORMING MANAGERIAL FUNCTIONS, OFFICE  
STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS. FURTHER-  
MORE IT IS CLEAR THAT IN QUITE A FEW CASES FALLING WITHIN SECTION 92 OF  
THE LABOUR RELATIONS ACT THE BOARD HAS FOUND AN "ALL EMPLOYEE" UNIT TO  
BE AN APPROPRIATE ONE. SEE, FOR EXAMPLE, L'ABBE CONSTRUCTION LIMITED,  
O.L.R.B. MONTHLY REPORT, APRIL 1964, P. 12, A CASE INVOLVING CANADIAN  
CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L.; AND NOREN CONSTRUCTION  
LIMITED, IBID, AT P. 11, A CASE INVOLVING LUMBER AND SAWMILL WORKERS  
UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS  
OF AMERICA.

HAVING REGARD TO THESE CONSIDERATIONS AND TO ALL THE CIRCUMSTANCES  
IN THIS CASE INCLUDING THE ABSENCE OF ANY EVIDENCE OR, INDEED, SUGGESTION,  
THAT THE APPLICANT UNION IS UNABLE TO ADMIT TO MEMBERSHIP PERSONS OTHER  
THAN THOSE ENGAGED IN ITS CRAFT OR THAT THE APPLICANT DOES NOT INTEND TO  
BARGAIN ON BEHALF OF SUCH PERSONS, THE BOARD FOUND THE BARGAINING UNIT  
DESCRIBED ABOVE TO BE APPROPRIATE.

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

9111-64-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) V. SECURITY & INVESTIGATION  
SERVICES LIMITED, (RESPONDENT). (6 EMPLOYEES).



THE APPLICANT APPLIED FOR A UNIT OF EMPLOYEES COMPOSED OF ALL SECURITY GUARDS AT THE PREMISES OF J.M. SCHNEIDER LIMITED, IN KITCHENER.

THE EVIDENCE AS TO THE BARGAINING UNIT WAS AS FOLLOWS:

"THE HEAD OFFICE OF THE RESPONDENT COMPANY IS LOCATED IN TORONTO. THE RESPONDENT HAS TWO DIVISIONS, NAMELY, THE TORONTO DIVISION AND THE WESTERN ONTARIO DIVISION. THE WESTERN ONTARIO DIVISION HAS A BRANCH LOCATED IN LONDON, HAMILTON, AND KITCHENER. PERSONS EMPLOYED AS SECURITY GUARDS ARE HIRED BY THE MANAGERIAL STAFF IN EACH BRANCH. THE RESPONDENT HAS INDIVIDUAL CONTRACTS WITH CLIENTS WHO RETAIN THE SECURITY SERVICE OF THE RESPONDENT. THE CONTRACTS WHICH ARE ADMINISTERED BY THE KITCHENER BRANCH AT THE DATE OF THE MAKING OF THE APPLICATION ENCOMPASSED LISTOWEL, STRATFORD AND GALT AS WELL AS THE KITCHENER AREA. THE RESPONDENT HAS A CONTRACT TO PROVIDE SECURITY SERVICES TO J.M. SCHNEIDER LIMITED IN KITCHENER. THE SECURITY GUARDS REQUIRED UNDER THE CONTRACT ARE PROVIDED BY THE KITCHENER BRANCH."

HAVING REGARD TO THE DEGREE OF INTERCHANGE OF SECURITY PERSONNEL BETWEEN THE PREMISES OF CLIENTS WHOSE CONTRACTS ARE ADMINISTERED BY THE KITCHENER BRANCH OF THE RESPONDENT, THE BOARD FOUND APPROPRIATE THE FOLLOWING UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS SECURITY GUARDS AT THE KITCHENER BRANCH OF ITS WESTERN ONTARIO DIVISION, SAVE AND EXCEPT SERGEANT AND PERSONS ABOVE THE RANK OF SERGEANT."

9406-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (APPLICANT) v. DUPONT OF CANADA LIMITED, KINGSTON WORKS (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 331 )

9442-64-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION, LOCAL 902 OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) v. NEW HANMER HOTEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES AT HANMER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

9506-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 700 (APPLICANT) v. WATSONS MANUFACTURING COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

VOTING CONSTITUENCY:

"ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT THE CHIEF ENGINEER."

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS

APPLICATION IN THIS MATTER, BY LETTER DATED OCTOBER 27TH, 1964. THIS REQUEST HAVING BEEN MADE SUBSEQUENT TO THE EXAMINER'S MEETING WITH THE PARTIES TO ARRANGE THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE, THE BOARD IS OF OPINION THAT THE APPLICANT'S REQUEST SHOULD NOT BE GRANTED BUT, HAVING REGARD TO THE STAGE AT WHICH THE REQUEST WAS MADE, THE APPLICATION SHOULD BE DISMISSED AND IT IS ACCORDINGLY DISMISSED."

DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

8812-64-R: INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O. C.L.C. (APPLICANT)  
V. THE J.F. HARTZ COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GRENVILLE STREET PLANT IN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES STAFF, STORE EMPLOYEES, AND OFFICE STAFF." (81 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTER'S LIST		80
NUMBER OF BALLOTS CAST		80
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	41	

8962-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. SATIN FINISH  
HARDWOOD FLOORING LIMITED (RESPONDENT).

VOTING CONSTITUENCY:

"ALL EMPLOYEES OF THE RESPONDENT AT ITS WESTON PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SHIPPER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTER'S LIST		69
NUMBER OF BALLOTS CAST		69
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	32	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35	

FOLLOWING THE TAKING OF THE VOTE IN THIS CASE, COUNSEL FOR THE APPLICANT FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS URGING THAT THE VOTE TAKEN IN THIS MATTER ON AUGUST 19 BE DISREGARDED AND A NEW VOTE HELD BECAUSE A LARGE NUMBER OF EMPLOYEES WERE ADDED TO THE WORK FORCE "AT A TIME WHEN IT WAS IMPOSSIBLE FOR THE APPLICANT TO IDENTIFY THE NEW EMPLOYEES OR TO ACQUAINT THEM WITH THE MEANING AND PURPOSE OF THE VOTE". THE BOARD, IN DISMISSING THE OBJECTIONS TO THE VOTE, SAID:-

"WHATEVER THE SITUATION MAY HAVE BEEN IN THIS CASE AT THE TIME OF THE MEETING BETWEEN THE PARTIES AND THE EXAMINER TO MAKE THE ARRANGEMENTS FOR THE PRE-HEARING REPRESENTATION VOTE, THE FACT REMAINS THAT, ON AUGUST 6, 1964, THE BOARD'S DIRECTION FOR THE TAKING OF THE VOTE SET OUT CLEARLY AND UNEQUIVOCALLY THAT THOSE ENTITLED TO VOTE WERE EMPLOYEES IN THE VOTING CONSTITUENCY ON THE 27TH DAY OF JULY, 1964. THE REGISTRAR'S LETTER EMBODYING THE BOARD'S DECISION WAS MAILED TO THE PARTIES ON AUGUST 6TH, 1964, AND THERE IS NOTHING BEFORE US TO INDICATE THAT IT WAS NOT RECEIVED BY THE UNION IN THE ORDINARY COURSE OF MAIL. IN THAT LETTER, THE REGISTRAR FIXED THE DEADLINE FOR THE ISSUING OF PROPAGANDA AT MIDNIGHT OF SATURDAY, THE 15TH OF AUGUST. THE UNION COULD HAVE OBJECTED TO THE BOARD'S DECISION IMMEDIATELY AFTER IT RECEIVED THE REGISTRAR'S LETTER, OR IT COULD HAVE TAKEN STEPS TO ASCERTAIN WHO THE ADDITIONAL VOTERS MIGHT BE SO THAT IT COULD ADDRESS PROPAGANDA TO THEM PRIOR TO THE DEADLINE FIXED BY THE REGISTRAR. HAVING FAILED TO DO SO AT THAT TIME, IT CANNOT NOW BE HEARD TO COMPLAIN. THE UNION'S OBJECTIONS TO THE VOTE ARE THEREFORE DISMISSED."

9297-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. STALEY (CANADA) LIMITED (RESPONDENT).

VOTING CONSTITUENCY:

"ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	5
NUMBER OF BALLOTS CAST	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8757-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (APPLICANT) V. VERSPEETEN CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DELHI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	8
NUMBER OF BALLOTS CAST	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

FOR THE PURPOSES OF CLARITY THE BOARD DETERMINED THAT A NAMED EMPLOYEE IS A MEMBER OF THE BARGAINING UNIT.

8767-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (APPLICANT) V. E.T. WALKER'S TRANSPORT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AYLMEY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	14
NUMBER OF BALLOTS CAST	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

8913-64-R: RESILIENT FLOOR WORKERS, LOCAL UNION 2965, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (AFL-CIO) (APPLICANT) V. RUSS HAYES CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING AT OR OUT OF HAMILTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTER'S LIST	5
NUMBER OF BALLOTS CAST	5
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"REFERENCE IS MADE TO KENT TILE & MARBLE CO. LIMITED (1961)  
CCH CANADIAN LABOUR LAW REPORTS ¶16204, C.L.S. 76-758.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CARPET INSTALLATORS ARE INCLUDED IN THE BARGAINING UNIT."

8914-64-R: RESILIENT FLOOR WORKERS, LOCAL UNION 2965, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (AFL-CIO) (APPLICANT) V. FARR TILE CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING AT OR OUT OF HAMILTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"REFERENCE IS MADE TO KENT TILE & MARBLE CO. LIMITED (1961)  
CCH CANADIAN LABOUR LAW REPORTS ¶16204, C.L.S. 76-758

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CARPET INSTALLATORS ARE INCLUDED IN THE BARGAINING UNIT."



NUMBER OF NAMES ON REVISED VOTER'S LIST	6
NUMBER OF BALLOTS CAST	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

8801-64-R: INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 1250 (APPLICANT) V. STANDARD PAVING LIMITED (RESPONDENT). (125 EMPLOYEES).

9390-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. EAST LAKE EQUIPMENT CO. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (INTERVENER). (3 EMPLOYEES).

9391-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION NO. 1036 (APPLICANT) V. SANCO CONSTRUCTION LIMITED (RESPONDENT). (16 EMPLOYEES).

9439-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN ENGINEERING AND CONTRACTING (RESPONDENT). (3 EMPLOYEES).

9455-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. HI-LO EQUIPMENT (CANADA) LTD. (RESPONDENT). (49 EMPLOYEES).

9467-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BENNINGTON DEVELOPMENT LIMITED (RESPONDENT). (6 EMPLOYEES).

9484-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WILLECHO MINES LIMITED (RESPONDENT). (36 EMPLOYEES).

9500-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #749 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT). (6 EMPLOYEES).

9531-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #1036 (APPLICANT) V. McLARTY BROS. AND BRODIE LTD. (RESPONDENT). (6 EMPLOYEES).

9569-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. EASTERN CONSTRUCTION CO. LTD. (RESPONDENT) (9 EMPLOYEES).

9580-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. LORNE CREST DEVELOPMENTS LTD. (RESPONDENT). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING OCTOBER

9345-64-R: VANSER INVESTMENTS LIMITED (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 442, NIAGARA FALLS, ONTARIO (RESPONDENT). (GRANTED). (12 EMPLOYEES).

(RE: KING EDWARD HOTEL,  
NIAGARA FALLS, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 333 )

9471-64-R: PRINCIPAL INVESTMENTS LIMITED BY ITS RECEIVER AND MANAGER, NATIONAL TRUST COMPANY, LIMITED (APPLICANT) v. BUILDING SERVICE EMPLOYEES' UNION, LOCAL 204, 641 YONGE STREET, TORONTO 5, ONTARIO (RESPONDENT). (DISMISSED).  
(7 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY AN EMPLOYER, EXPRESSED TO BE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. IN ITS APPLICATION, THE APPLICANT, IN THE INFORMATION IT HAS SUPPLIED UNDER PARAGRAPH 3 OF THE APPLICATION FORM (DETAILED DESCRIPTION ... OF THE UNIT ...) STATES IN PART "ALL EMPLOYEES WHICH IS NOW NIL". UNDER PARAGRAPH 4 (APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT DESCRIBED IN PARAGRAPH 3") APPLICANT SAYS "NIL". IN PARAGRAPH 5 ("OTHER RELEVANT STATEMENTS..."), THE APPLICATION READS, "THE BUILDING HAS BECOME VACANT AND NOT REQUIRING ANYMORE HELP".

AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNDER SECTION 43 OF THE ACT CAN BE MADE ONLY BY EMPLOYEES; IT CANNOT BE MADE BY AN EMPLOYER. THIS APPLICATION IS THEREFORE MISCONCEIVED AND MUST BE DISMISSED ON THAT GROUND.

HOWEVER, EVEN IF WE WERE TO ASSUME THAT THIS IS AN APPLICATION MADE BY THE EMPLOYER UNDER SOME OTHER PROVISION OF THE ACT, THE FACT IS THAT IT IS BEING MADE AT A TIME WHEN THERE ARE NOT EMPLOYEES AT ALL IN THE APPROPRIATE BARGAINING UNIT. IN DEALING WITH A SIMILAR SITUATION IN THE BURNS CASE, 61 C.L.L.C. 953, C.L.S. 76-793, THE BOARD, QUOTING FROM AN EARLIER DECISION IN THE SOLE CASE, (1949) D.L.S. 7-2105, SAID:

A (TERMINATION) PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR (A DECLARATION TERMINATING BARGAINING RIGHTS) IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR ... BARGAINING AGENT. THE BASIS UPON WHICH (A DECLARATION TERMINATING BARGAINING RIGHTS) MAY BE GRANTED IS THAT "A BARGAINING AGENT NO LONGER REPRESENTS ... THE EMPLOYEE IN (THE BARGAINING UNIT)". THAT CRITERION, WE SUGGEST, PRESUMES THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN.

THE REASONING OF THAT CASE IS EQUALLY APPLICABLE TO THE FACTS OF THIS CASE AND THE APPLICATION IS HEREBY DISMISSED, PURSUANT TO SECTION 45 OF THE BOARD'S RULES OF PROCEDURE."

9528-64-R: RICHARD COOK (APPLICANT) v. UNITED PACKING HOUSE, FOOD AND ALLIED WORKER'S, A.F.L. - C.I.O. - C.L.C. (RESPONDENT). (DISMISSED). (22 EMPLOYEES).

(RE: COOK CHOCOLATE CANADA LTD.,  
CAMPBELLFORD, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT WAS CERTIFIED BY THE BOARD ON JULY 22ND, 1963 FOR A UNIT OF EMPLOYEES OF COOK CHOCOLATE CANADA LTD. AT CAMPBELLFORD. CONCILIATION SERVICES WERE GRANTED TO THE PARTIES BY THE BOARD ON OCTOBER 18TH, 1963. HAVING REGARD TO THE FACT THAT NEITHER A REPORT OF A CONCILIATION BOARD HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES, NOR HAS THE MINISTER INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, PURSUANT TO SECTION 46(1) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY."

9550-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) v. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L. - C.I.O., C.L.C. (RESPONDENT).

(RE: ADANAC ORNAMENTAL & WELDING WORKS LIMITED,  
HAMILTON, ONTARIO).

AND

9551-64-R: EMPLOYEES OF ADANAC ORNAMENTAL IRON WORKS LIMITED (APPLICANT) v. SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O., C.L.C.)(RESPONDENT)

(RE: ADANAC ORNAMENTAL & WELDING WORKS LIMITED,  
HAMILTON, ONTARIO).

THE ABOVE MATTERS WERE CONSOLIDATED AND AFFECTED 2 EMPLOYEES.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS.

AN EARLIER APPLICATION INVOLVING THE SAME PARTIES, BOARD FILE NO. 9142-64-R, WITH WHICH WAS CONSOLIDATED A SIMILAR APPLICATION, BOARD FILE NO. 9143-64-R, WAS DISMISSED BY THE BOARD ON SEPTEMBER 1ST, 1964. THE ENDORSEMENT READS IN PART AS FOLLOWS:-

CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND ADANAC ORNAMENTAL IRON WORKS LIMITED ON FEBRUARY 20, 1964, AND SUBSEQUENTLY A CONCILIATION BOARD WAS APPOINTED ON AUGUST 6, 1964, THE REPORT OF THE BOARD OF CONCILIATION WAS SENT TO THE PARTIES.

SINCE 12 MONTHS HAVE NOT ELAPSED FROM THE DATE OF THE GRANTING OF CONCILIATION SERVICES, AND SINCE IN ANY EVENT 30 DAYS HAVE NOT ELAPSED FOLLOWING THE RELEASE OF THE REPORT OF A CONCILIATION BOARD TO THE PARTIES, THIS



APPLICATION IS UNTIMELY UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY DISMISSED.

SECTION 46 (2) OF THE LABOUR RELATIONS ACT PROVIDES THAT IN CIRCUMSTANCES SUCH AS THESE, WHERE A NOTICE OF DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT HAS BEEN GIVEN AND CONCILIATION SERVICES HAVE BEEN GRANTED, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION THAT WAS A PARTY TO THE COLLECTIVE AGREEMENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT SHALL BE MADE FOLLOWING THE GRANTING OF CONCILIATION SERVICES UNLESS,

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

IN ITS DECISION DATED SEPTEMBER 1 ST, 1964, THE BOARD POINTED OUT THAT TWELVE MONTHS HAD NOT ELAPSED FROM THE GRANTING OF THE CONCILIATION SERVICES AND THAT IN ANY EVENT THIRTY DAYS HAD NOT ELAPSED FOLLOWING THE RELEASE OF THE REPORT OF THE BOARD OF CONCILIATION. WHILE THE PRESENT APPLICATION IS MADE MORE THAN THIRTY DAYS FOLLOWING THE RELEASE OF THE REPORT OF THE BOARD OF CONCILIATION, IT IS STILL THE CASE THAT TWELVE MONTHS HAVE NOT ELAPSED FROM THE GRANTING OF CONCILIATION SERVICES. THE ACT PROVIDES THAT IT IS THE LATER OF THESE DATES WHICH GOVERNS.

FOR ALL OF THE FOREGOING REASONS, THIS APPLICATION WOULD APPEAR TO BE UNTIMELY.

THE APPLICATION DOES NOT IN THE OPINION OF THE BOARD MAKE OUT A PRIMA FACIE CASE AND IS, THEREFORE, PURSUANT TO SECTION 45 (1) OF THE BOARD'S RULES OF PROCEDURE DISMISSED BY THE BOARD WITHOUT A HEARING FOR THE REASONS STATED."

APPLICATIONS FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION

DISPOSED OF DURING OCTOBER

9329-64-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. CABOT CARBON OF CANADA LIMITED (RESPONDENT) V. SARNIA GENERAL WORKERS UNION, LOCAL 1606, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF TRANSFER



OF JURISDICTION, THE SUCCESSOR TO SARNIA GENERAL WORKERS UNION LOCAL 1606, C.L.C. WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN CABOT CARBON OF CANADA, LTD. AND SARNIA GENERAL WORKERS UNION LOCAL 1606, C.L.C. EFFECTIVE FROM OCTOBER 7TH, 1963 TO SEPTEMBER 9TH, 1965, WITH YEAR TO YEAR RENEWAL SUBJECT TO NOTICE.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47 (1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT IS THE SUCCESSOR TO SARNIA GENERAL WORKERS UNION LOCAL 1606, C.L.C. WHICH WAS A PARTY TO THE AGREEMENT REFERRED TO WITH THE RESPONDENT WILL ISSUE."

9481-64-R: WONDER BAKERIES LIMITED (APPLICANT) V. RETAIL WHOLESALE AND CONFECTION WORKERS' UNION, LOCAL 461 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 335 ).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING OCTOBER 1964.

9412-64-U: AMILCARE (MIKE) ZANINI, CARRYING ON BUSINESS AS ZANINI AND COMPANY (APPLICANT) V. THE BRICKLAYERS' UNION NO. 2 (AFFILIATED WITH THE BRICKLAYERS', MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 336 )

9512-64-U: PAOLATTO INDUSTRIAL FLOORS (APPLICANT) V. WINDSOR OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 345 (RESPONDENT). (GRANTED).

AND

9515-64-U: BRAVO CEMENT CONTRACTING LIMITED (APPLICANT) V. WINDSOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 345 (RESPONDENT). (GRANTED).

IN THESE TWO APPLICATIONS THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE EVIDENCE INDICATES THAT THERE WERE UNRESOLVED DISPUTES BETWEEN THE UNION AND THE APPLICANT EMPLOYER EXTENDING OVER SOME PERIOD OF TIME WITH RESPECT TO CLAIMS BY CERTAIN EMPLOYEES OF THE APPLICANT FOR ALLEGED DEFICIENCIES IN THE PAYMENT OF WAGES. ALTHOUGH THE UNION, AND BY ITS ACTIONS, THE EMPLOYER, LED CERTAIN EMPLOYEES TO BELIEVE THAT THERE WAS VALIDITY IN THEIR CLAIMS AND THAT THEY WERE BEING CONSIDERED FOR ADJUSTMENT BY THE EMPLOYER, THE UNION, AS THEIR BARGAINING AGENT, MADE NO SERIOUS EFFORT TO PROCESS AND SETTLE THEM, AS IT WELL COULD HAVE DONE THROUGH THE GRIEVANCE PROCEDURE AVAILABLE AND AS PROVIDED IN THE COLLECTIVE AGREEMENT. WHILE NO DOUBT THE EMPLOYER MUST SHARE SOME OF THE RESPONSIBILITY FOR THE CONSEQUENCES, THE UNION'S FAILURE TO INVOLVE THE GRIEVANCE PROCEDURE TO COMPEL A TIMELY AND EXPEDITIOUS SETTLEMENT OF THE CLAIMS, COMPOUNDED AND GREATLY EXACERBATED A POTENTIALLY INFLAMMATORY SITUATION. THE UNION'S FAILURE IN THIS RESPECT, UNDOUBTEDLY PRECIPITATED AND LED TO THE WALKOUT OF EMPLOYEES WHICH COMMENCED ON OCTOBER 5TH, 1964

THE EVIDENCE IS CLEAR THAT CERTAIN OF THE APPLICANT'S EMPLOYEES DID WALK OUT AND REFUSE TO CONTINUE TO WORK IN COMBINATION AND IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING AND THAT THEIR ACTION IN THIS RESPECT CONSTITUTE AN UNLAWFUL STRIKE WHICH TOOK PLACE DURING THE TERM OF A COLLECTIVE AGREEMENT CONTRARY TO SECTION 54 (1) OF THE LABOUR RELATIONS ACT.

WHILE THE EVIDENCE FALLS SHORT OF SATISFYING US THAT THE UNION CALLED THE UNLAWFUL STRIKE, WE ARE CONSTRAINED TO FIND THAT THE CONDUCT AND ACTIONS OF THE UNION'S OFFICERS DURING THE COURSE OF THE STRIKE IS CONSISTENT ONLY WITH THE CONCLUSION THAT THE UNION APPROVED AND AUTHORIZED THE STRIKE.

IN ALL THE CIRCUMSTANCES, WE ARE UNABLE TO FIND ANY REASONABLE BASIS TO PERSUADE US THAT OUR DISCRETION SHOULD BE EXERCISED AGAINST GRANTING A DECLARATION IN THIS CASE.

IN THE RESULT WE DECLARE THAT THE RESPONDENT DID, IN OR ABOUT THE 5TH DAY OF OCTOBER, 1964, AUTHORIZE AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT."

IN BOTH APPLICATIONS BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT.

THE EVIDENCE CLEARLY SHOWS THAT AFTER INDIVIDUAL COMPLAINTS WERE MADE BY EMPLOYEES THE EMPLOYER PROMISED TO PAY WITHHELD WAGES. AT NO TIME DID HE INFORM THE EMPLOYEES THAT IN HIS OPINION THEY WERE NOT ENTITLED TO THESE WAGES UNDER THE TERMS OF THE AGREEMENT NEITHER DID HE REFER TO THE EXISTENCE OF AN AGREEMENT.

IT APPEARS THAT WHILE THE EMPLOYEES WERE SATISFIED WITH THESE PERSONAL ASSURANCES AN ACCUMULATION OF EMPLOYER FAILURES TO ADJUST THE CLAIMS OVER AN EXTENDED PERIOD OF TIME RESULTED IN A WORK STOPPAGE. THE EVIDENCE THE EMPLOYEES DECIDED TO QUIT WORK WITHOUT REFERENCE TO UNION. THE UNION DID NOT CALL A STRIKE.

ALTHOUGH THE GRIEVANCE PROCEDURE WAS AVAILABLE, THE UNION ELECTED TO DEAL WITH THE PROBLEM BY NEGOTIATING WITH THE WINDSOR BUILDERS EXCHANGE AND THE EMPLOYER.

A PRIOR WORK STOPPAGE OCCURRED IN FEBRUARY, 1962, ON THE SAME ISSUE. THE UNION INFLUENCED THE EMPLOYEES TO RESUME WORK ON ASSURANCES THAT THE PROBLEM WOULD HAVE ATTENTION. THERE WAS NO SUBSEQUENT RESOLUTION OF THE CLAIMS.

UPON COMMENCEMENT OF THE CURRENT REFUSAL TO WORK THE UNION TOLD SOME EMPLOYEES TO RETURN TO WORK. IN REPLY THE EMPLOYEES TOLD THE UNION TO LEAVE TOWN AS THEIR PRIOR ACCEPTANCE OF THE UNION DIRECTION TO RETURN TO WORK HAD NOT RESOLVED THE PROBLEM. THE UNION'S ABILITY TO DIRECT WAS REDUCED. THE CONDUCT OF THE UNION SUBSEQUENT TO THE STOPPAGE, IN MY VIEW, DOES NOT CONSTITUTE AN AUTHORIZATION.

THERE WAS SOME FAULT IN THE UNION'S ELECTION TO NEGOTIATE THE PROBLEM RATHER THAN USE THE AVAILABLE GRIEVANCE PROCEDURE. HOWEVER, IN MY VIEW,

THE PRINCIPLE RESPONSIBILITY FOR THE STOPPAGE LIES IN THE EMPLOYER'S MISREPRESENTATION OF THE PROBLEM TO THE EMPLOYEES THROUGH HIS PROMISES TO PAY.

IN THE CIRCUMSTANCES OF THIS CASE, I FIND THE EMPLOYER FAILED TO ACT IN GOOD FAITH AND WAS MAINLY RESPONSIBLE FOR HIS OWN MISFORTUNE. I WOULD NOT ISSUE A DECLARATION OF STRIKE UNLAWFUL."

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

8679-64-U: THE BRICKLAYERS' AND MASONS' UNION LOCAL NO. 1, ONTARIO, OF THE CITY OF HAMILTON (APPLICANT) V. PIGOTT CONSTRUCTION COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING OCTOBER 1964

7248-63-U: KENT FUR CO. (COMPLAINANT) V. FUR WORKERS' UNION, LOCAL 82, AFFILIATE WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AND K. TORENT (RESPONDENT).

9089-64-U: GENERAL TRUCK DRIVER'S UNION, LOCAL 938 (COMPLAINANT) V. TRANS-PROVINCIAL FREIGHT CARRIERS LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS CASE DISCLOSED A SHARP CONFLICT OF TESTIMONY AMONG THE WITNESSES ON A NUMBER OF POINTS VITAL TO ANY DETERMINATION IN FAVOUR OF THE COMPLAINT. THE NATURE OF THE CONFLICT IS SUCH THAT IT IS DIFFICULT TO APPREHEND THAT IT RESULTS FROM A MERE HONEST DIFFERENCE OF RECOLLECTION.

WE HAVE CAREFULLY STUDIED AND COMPARED THE CONTENTS OF THE TESTIMONY OF EACH OF THE WITNESSES AND HAVE ASSESSED THE RELATIVE PROBABILITIES THEREOF WITH OUR IMPRESSIONS OF THEIR Demeanour AND MANNER OF GIVING THEIR EVIDENCE. IN ALL THE CIRCUMSTANCES, AND WHILE WE ARE NOT WITHOUT SUSPICION AS TO THE RELIABILITY OF SOME OF THE TESTIMONY OF THE RESPONDENT'S WITNESSES, WE ARE, ON THE WHOLE, CONSTRAINED TO CONCLUDE THAT IT APPEARS TO WARRANT MORE CREDENCE THAN THE EVIDENCE OF THE WITNESSES WHO TESTIFIED ON BEHALF OF THE COMPLAINANT.

IT IS, OF COURSE, A CONDITION PRECEDENT TO OBTAINING RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT THAT THE COMPLAINANT SATISFY THIS BOARD, BY CREDIBLE EVIDENCE, THAT THE TREATMENT ACCORDED THE AGGRIEVED EMPLOYEES BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT. WHILE THERE MAY BE ROOM FOR SOME CONJECTURE ON THE MATTER, THE EVIDENCE FALLS SHORT OF SATISFYING US THAT THEIR UNION AFFILIATION OR PAST UNION ACTIVITIES WERE A FACTOR IN THE TERMINATION OF THE EMPLOYMENT OF J. ENDER AND RICHARD PARKER.

THE COMPLAINT IS DISMISSED."

9224-64-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 442, NIAGARA FALLS, ONTARIO (COMPLAINANT) V. HOCO LIMITED, CARRYING ON

BUSINESS AS PARK MOTOR HOTEL (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT THEY WERE DISCHARGED BY OFFICERS OF THE RESPONDENT COMPANY ON OR ABOUT AUGUST 19TH, 1964, BECAUSE OF THEIR UNION ACTIVITY.

HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT THE PERSONS AGGRIEVED WERE DISCHARGED BECAUSE OF THEIR UNION ACTIVITY.

THE COMPLAINT ACCORDINGLY IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE PERSONS AGGRIEVED WERE DISCHARGED BECAUSE OF THEIR UNION ACTIVITY."

9226-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (COMPLAINANT) V. NEW TEMISKAMING HOTEL LIMITED, OPERATING AS HOTEL HAILEYBURY (RESPONDENT).

9257-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 183 (COMPLAINANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY TO THE MANNER IN WHICH THE OWNER OF THE RESPONDENT TESTIFIED AND HIS PATENT ANIMOSITY TOWARDS THE RESPONDENT AND ITS MEMBERS WE FIND THAT THE RESPONDENT'S ATTITUDE TOWARDS HIS EMPLOYEES WAS ADVERSELY AFFECTED BY THEIR MEMBERSHIP IN THE COMPLAINANT UNION.

IN ADDITION THE RESPONDENT MUST ALSO ACCEPT RESPONSIBILITY FOR THE TREATMENT OF THE EMPLOYEES AT THE HANDS OF THE RESPONDENT'S WORKS MANAGER, MR. RANDALL, AND OTHER PERSONS EXERCISING MANAGERIAL FUNCTIONS BECAUSE AN EMPLOYER ACTS THROUGH HIS OFFICERS AND OFFICIALS WHO HAVE AUTHORITY OVER HIS EMPLOYEES.

THE BOARD IS SATISFIED THAT MRS. MADELINE BRYAN WAS DEALT WITH BY THE RESPONDENT ON AUGUST 28TH, 1964, CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

THE BOARD DETERMINES THAT:

- (A) MRS. MADELINE BRYAN SHALL BE RE-EMPLOYED FORTHWITH IN THE POSITION HELD BY HER AT THE TIME SHE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT;
- (B) THE RESPONDENT SHALL PAY TO MRS. MADELINE BRYAN THE SUM OF \$18.00 FORTHWITH, AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM AUGUST 28TH, 1964, UP TO AND INCLUDING OCTOBER 10TH, 1964;



- (c) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF ADDITIONAL LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY MRS. MADELINE BRYAN BETWEEN OCTOBER 10TH, 1964, AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT IN THE POSITION HELD BY HER PRIOR TO AUGUST 28TH, 1964; AND
- (d) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (c) HEREOF, WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FUTURE PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO MRS. MADELINE BRYAN."

9304-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 183 (COMPLAINANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY TO THE MANNER IN WHICH THE OWNER OF THE RESPONDENT TESTIFIED AND HIS PATENT ANIMOSITY TOWARDS THE RESPONDENT AND ITS MEMBERS WE FIND THAT THE RESPONDENT'S ATTITUDE TOWARDS HIS EMPLOYEES WAS ADVERSELY AFFECTED BY THEIR MEMBERSHIP IN THE COMPLAINANT UNION.

IN ADDITION THE RESPONDENT MUST ALSO ACCEPT RESPONSIBILITY FOR THE TREATMENT OF THE EMPLOYEES AT THE HANDS OF THE RESPONDENT'S WORKS MANAGER, Mr. RANDALL, AND OTHER PERSONS EXERCISING MANAGERIAL FUNCTIONS BECAUSE AN EMPLOYER ACTS THROUGH HIS OFFICERS AND OFFICIALS WHO HAVE AUTHORITY OVER HIS EMPLOYEES.

THE BOARD IS THEREFORE SATISFIED THAT LYNN GILBERT LOGAN WAS DEALT WITH BY THE RESPONDENT ON AUGUST 28TH, 1964, AND SUBSEQUENTLY DISCHARGED BY THE RESPONDENT ON SEPTEMBER 11TH, 1964, CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE BOARD THEREFORE DETERMINES THAT:

- (a) LYNN GILBERT LOGAN SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM PRIOR TO BEING DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT;
- (b) THAT THE RESPONDENT PAY TO LYNN GILBERT LOGAN THE SUM OF \$325.00 FORTHWITH AS COMPENSATION FOR LOSS OF WAGES, UP TO AND INCLUDING OCTOBER 10TH, 1964;
- (c) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF ADDITIONAL LOSS OF EARNINGS AND OTHER EMPLOYMENT

BENEFITS, IF ANY, SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY LYNN GILBERT LOGAN BETWEEN OCTOBER 10TH, 1964, AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT; AND

- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF, WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FUTURE PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO LYNN GILBERT LOGAN.

9383-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT).

9386-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (COMPLAINANT) V. CECIL HOUSE, HAMILTON, ONTARIO (RESPONDENT).

9393-64-U: CORNWALL GENERAL WORKERS UNION, LOCAL 1617, C.L.C. (COMPLAINANT) V. DOMINION TAPE OF CANADA, LIMITED (RESPONDENT).

9396-64-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. CANADA DRY BOTTLING COMPANY (BARRIE) LIMITED (RESPONDENT).

9397-64-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. CANADA DRY BOTTLING COMPANY (BARRIE) LIMITED (RESPONDENT).

9405-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. JOANISSE LIMITED (RESPONDENT).

9427-64-U: CANADIAN GUARDS ASSOCIATION (COMPLAINANT) V. SECURITY INVESTIGATION SERVICES LIMITED (RESPONDENT).

9447-64-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L. C.I.O. C.L.C. (COMPLAINANT) V. SHOPPY'S FOODS LTD. (RESPONDENT).

9463-64-U: LITHOGRAPHERS & PHOTO-ENGRAVERS INTERNATIONAL UNION, LOCAL 42 (COMPLAINANT) V. MERCHANTS PRINTING CO. LTD. (RESPONDENT).

9482-64-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. SHOPSY'S FOODS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN VIEW OF THE OFFERS OF EMPLOYMENT AND ASSURANCES GIVEN THE FIELD OFFICER BY THE RESPONDENT, THE BOARD DOES NOT DEEM IT ADVISABLE TO INQUIRE FURTHER INTO THE COMPLAINT IN THIS MATTER BY MEANS OF A HEARING BY THE BOARD."

9512-64-U: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION LOCAL 197 IN HAMILTON (COMPLAINANT) V. KAVANAGH'S CORKTOWN HOUSE (RESPONDENT).

APPLICATION FOR DETERMINATION UNDER SECTION 34 (5)

DISPOSED OF DURING OCTOBER

9459-64-M: LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. DELTA PLUMBING AND HEATING COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT, THE MINISTER OF LABOUR REFERRED TO THE BOARD FOR DETERMINATION THE QUESTION WHETHER THERE IS A COLLECTIVE AGREEMENT IN OPERATION BINDING UPON THE PARTIES.

IT IS NOT DISPUTED THAT DELTA PLUMBING AND HEATING COMPANY LIMITED (HEREINAFTER REFERRED TO AS DELTA) WAS A MEMBER OF THE KINGSTON BUILDERS' EXCHANGE (HEREINAFTER REFERRED TO AS THE EXCHANGE) UNTIL DECEMBER 31ST, 1962. ALSO IT IS NOT DISPUTED THAT DELTA WAS BOUND BY A COLLECTIVE AGREEMENT DATED MAY 1ST, 1961 BETWEEN LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS THE UNION) AND THE PLUMBING SECTION OF THE EXCHANGE. THE AGREEMENT WAS SIGNED BY THE EXCHANGE ON BEHALF OF THOSE MEMBERS WHOSE NAMES APPEAR IN APPENDIX "A" OF THE AGREEMENT. THE NAME OF DELTA APPEARS ON APPENDIX "A". THE TERMINATION CLAUSE PROVIDES THAT THE AGREEMENT IS EFFECTIVE FROM MAY 1ST, 1961 UNTIL APRIL 30TH, 1963 AND FROM YEAR TO YEAR THEREAFTER, SUBJECT TO WRITTEN NOTICE BEING GIVEN BY EITHER PARTY PRIOR TO JANUARY 31ST, 1963.

BY LETTER DATED JANUARY 12TH, 1963, THE UNION GAVE NOTICE TO THE CHAIRMAN OF THE PLUMBING SECTION OF THE EXCHANGE. A MEETING TOOK PLACE ON FEBRUARY 28TH, 1963 BETWEEN REPRESENTATIVES OF THE UNION AND THE EXCHANGE. KENNETH HULSE, THE BUSINESS MANAGER AND FINANCIAL SECRETARY OF THE UNION, WHO WAS IN ATTENDANCE AT THE MEETING TESTIFIED THAT THE UNION MADE INQUIRIES AS TO THE COMPANIES ON WHOSE BEHALF THE EXCHANGE WAS BARGAINING. THE REPRESENTATIVES OF THE EXCHANGE INFORMED THE UNION THAT THEY WERE BARGAINING ON BEHALF OF THE NAMED COMPANIES LISTED ON APPENDIX "A" OF THE MAY 1ST, 1961 COLLECTIVE AGREEMENT, WITH THE EXCEPTION OF ONE NAMED COMPANY ON APPENDIX "A", WHICH WAS NO LONGER A MEMBER OF THE EXCHANGE. THE UNION ALSO WAS INFORMED OF THE NAMES OF THREE ADDITIONAL COMPANIES WHICH HAD BECOME MEMBERS OF THE EXCHANGE AND ON WHOSE BEHALF THE EXCHANGE WAS BARGAINING. NO SPECIFIC REFERENCE WAS MADE TO DELTA OR TO ANY OTHER COMPANY WHOSE NAME WAS LISTED ON APPENDIX "A". THE EXCHANGE DID NOT PROVIDE A SEPARATE WRITTEN LIST OF THE NAMES OF THE COMPANIES ON WHOSE BEHALF IT WAS BARGAINING.

AFTER A FURTHER MEETING BETWEEN REPRESENTATIVES OF THE PARTIES APRIL 23RD, THE UNION MADE APPLICATION TO THE BOARD ON APRIL 26TH FOR CONCILIATION SERVICES. A COPY OF THE UNION'S APPLICATION WAS SENT BY

REGISTERED MAIL TO THE EXCHANGE AND TO EACH OF THE COMPANIES LISTED ON APPENDIX "A" INCLUDING DELTA. A COPY OF THE BOARD'S ENDORSEMENT DATED MAY 6TH, 1963 GRANTING THE APPLICANT'S REQUEST FOR CONCILIATION SERVICES WAS MAILED TO THE EXCHANGE AND TO EACH OF THE COMPANIES ON APPENDIX "A".

THE UNION AND THE PLUMBING SECTION OF THE EXCHANGE ON BEHALF OF THOSE MEMBERS APPEARING ON APPENDIX "A", WHICH INCLUDED DELTA, ENTERED INTO A COLLECTIVE AGREEMENT ON JULY 26TH, 1963. THE AGREEMENT IS IN EFFECT FROM MAY 1ST, 1963 UNTIL APRIL 30TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

HULSE TESTIFIED THAT AT NO TIME PRIOR TO JULY 26TH, 1963, THE DATE OF THE SIGNING OF THE CURRENT COLLECTIVE AGREEMENT, DID EITHER THE EXCHANGE OR DELTA GIVE WRITTEN OR ORAL NOTICE TO THE UNION THAT DELTA WAS NOT A MEMBER OF THE EXCHANGE OR THAT THE EXCHANGE WAS NOT BARGAINING ON BEHALF OF DELTA. A LETTER DATED OCTOBER 14TH, 1964 ADDRESSED TO HULSE AND PURPORTEDLY SIGNED BY R.B. WARMINGTON, SECRETARY-MANAGER OF THE EXCHANGE, WHICH WAS FILED WITH THE BOARD STATES, IN PART, THAT "NO RESIGNATION ON BEHALF OF DELTA PLUMBING WAS RECEIVED BY THIS EXCHANGE AND NO NOTICE WAS RECEIVED BY THIS EXCHANGE ADVISING THAT DELTA PLUMBING DID NOT WISH TO BE BARGAINED FOR WITH LOCAL UNION 221".

VICTOR YACHUK, THE VICE-PRESIDENT OF DELTA, TESTIFIED THAT HE HAD A TELEPHONE CONVERSATION WITH WARMINGTON SOME TIME IN FEBRUARY 1963 DURING WHICH HE TOLD WARMINGTON THAT DELTA WAS NO LONGER A MEMBER OF THE EXCHANGE AND WOULD NOT BE PAYING ITS MEMBERSHIP DUES. YACHUK'S EVIDENCE IS THAT DELTA DID NOT PAY MEMBERSHIP DUES TO THE EXCHANGE FOR 1963. YACHUK ADMITTED THAT DELTA DID NOT AT ANY TIME PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT ON JULY 26TH, 1963 GIVE WRITTEN NOTICE TO THE EXCHANGE OF ITS RESIGNATION, NOR DID DELTA GIVE EITHER WRITTEN OR ORAL NOTICE TO THE UNION THAT DELTA WAS NOT A MEMBER OF THE EXCHANGE AND DID NOT WISH TO HAVE THE EXCHANGE BARGAIN ON ITS BEHALF.

SECTION 38 SUBSECTION (2) OF THE LABOUR RELATIONS ACT READS:

WHEN AN EMPLOYERS' ORGANIZATION COMMENCES TO BARGAIN WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS, IT SHALL DELIVER TO THE TRADE UNION, OR COUNCIL OF TRADE UNIONS A LIST OF THE NAMES OF THE EMPLOYERS ON WHOSE BEHALF IT IS BARGAINING AND, IN DEFAULT OF SO DOING, IT SHALL BE DEEMED TO BARGAIN FOR ALL MEMBERS OF THE EMPLOYERS' ORGANIZATION FOR WHOSE EMPLOYEES THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO BARGAIN AND TO MAKE A COLLECTIVE AGREEMENT AT THAT TIME, EXCEPT AN EMPLOYER WHO, EITHER BY HIMSELF OR THROUGH THE EMPLOYERS' ORGANIZATION, HAS NOTIFIED THE TRADE UNION OR COUNCIL OF TRADE UNIONS IN WRITING BEFORE THE AGREEMENT WAS ENTERED INTO THAT HE WILL NOT BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYERS' ORGANIZATION AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS.

ALTHOUGH THE EXCHANGE DID NOT DELIVER TO THE UNION A LIST, THE EXCHANGE AT THE FEBRUARY 28TH MEETING MADE IT ABUNDANTLY CLEAR TO



THE UNION THE COMPANIES ON WHOSE BEHALF IT WAS BARGAINING. IN ANY EVENT, PURSUANT TO SECTION 38(2) OF THE LABOUR RELATIONS ACT THE EXCHANGE MUST BE DEEMED IN THE INSTANT CASE TO HAVE BEEN BARGAINING ON BEHALF OF DELTA. DELTA ONLY COULD HAVE EXEMPTED ITSELF FROM THE BINDING EFFECT OF THE COLLECTIVE AGREEMENT ENTERED INTO BY THE EXCHANGE AND THE UNION IF EITHER DELTA OR THE EXCHANGE HAD NOTIFIED THE UNION IN WRITING BEFORE THE AGREEMENT WAS ENTERED INTO THAT DELTA WOULD NOT BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE EXCHANGE. NO SUCH NOTICE WAS GIVEN TO THE UNION BY THE EXCHANGE OR DELTA.

THE BOARD ACCORDINGLY FINDS THAT DELTA IS BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE PLUMBING SECTION OF THE EXCHANGE DATED JULY 26TH, 1963.

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE  
AGREEMENT DISPOSED OF DURING OCTOBER

9394-64-M: THE BRICKLAYERS', MASONS', AND PLASTERERS' INTERNATIONAL UNION, LOCAL NO. 12, ONTARIO (APPLICANT) V. BALL BROTHERS LIMITED, GEORGE & ASMUSSEN LIMITED, DUNKER CONSTRUCTION LIMITED, CULP BROTHERS LIMITED, ALFRED GRASSING & SON LTD., LAVERN ASMUSSEN LIMITED, OSCAR WILES & SONS LIMITED AND ABLE CONSTRUCTION (RESPONDENTS).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICATION INsofar AS IT RELATES TO THE RESPONDENT ABLE CONSTRUCTION IS WITHDRAWN BY LEAVE OF THE BOARD.

THE BRICKLAYERS', MASONS' & PLASTERERS' UNION, LOCAL NO. 12, ONTARIO, ON THE ONE HAND AND BALL BROTHERS LTD., GEORGE AND ASMUSSEN LIMITED, DUNKER CONSTRUCTION LIMITED, CULP BROS. LTD., ALFRED GRASSING & SON LTD., LAVERN ASMUSSEN LTD., AND OSCAR WILES AND SONS LIMITED ON THE OTHER HAND HAVING JOINTLY APPLIED FOR AN EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THEM PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT; THE BOARD CONSENTS TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENT DATED THE 1ST DAY OF MAY, 1962, TERMINATION TO BE EFFECTIVE ON THE 13TH DAY OF OCTOBER, 1964."

INDEXED ENDORSEMENT - CERTIFICATION

9406-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (APPLICANT) V. DUPONT OF CANADA LIMITED, KINGSTON WORKS (RESPONDENT) V. DISTRICT 50, UNITED MINING WORKERS OF AMERICA (INTERVENER). (15 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT SEEKS A BARGAINING UNIT CONSISTING OF STATIONARY ENGINEERS AND HELPERS. COUNSEL FOR THE RESPONDENT AND FOR THE INTERVENER, WHICH IS THE INCUMBENT BARGAINING AGENT, SUBMIT THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE BY REASON OF THE BARGAINING HISTORY IN THE PLANT. THAT HISTORY IS AS FOLLOWS: THE INTERVENER WAS

CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE PREDECESSOR OF THE RESPONDENT COMPANY IN 1946 AND THERE HAVE BEEN COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT OR ITS PREDECESSOR AND THE INTERVENER SINCE 1947. THE STATIONARY ENGINEERS AND THEIR HELPERS HAVE BEEN INCLUDED IN THE BARGAINING UNIT THROUGHOUT THIS PERIOD AND COLLECTIVE AGREEMENTS HAVE CONTAINED CERTAIN SPECIAL PROVISIONS WITH RESPECT TO THEM. WAGE RATES ARE PROVIDED FOR ENGINEERS AND THE INCREASES NEGOTIATED FOR THIS GROUP HAVE CUMSTOMARILY INCLUDED A SPECIAL INCREASE IN ADDITION TO THE GENERAL WAGE INCREASE. ALONG WITH OTHER CRAFT GROUPS THE ENGINEERS HAVE STEWARD REPRESENTATION AND IN 1961 A STATIONARY ENGINEER WAS A MEMBER OF THE BARGAINING COMMITTEE. THE ENGINEERS HAVE PLANT-WIDE SENIORITY, HAVE MADE USE OF THE GRIEVANCE PROCEDURE WITH THE ASSISTANCE OF THE INCUMBENT UNION AND HAVE FROM TIME TO TIME TRANSFERRED FROM OTHER CLASSIFICATIONS WITHIN THE PLANT. THE EVIDENCE ESTABLISHES THAT OVER A PERIOD OF MANY YEARS THE INTERVENER HAS EFFECTIVELY REPRESENTED THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT.

IT WAS ARGUED BY THE APPLICANT THAT THE INTERVENER OPERATES ON BOTH AN INDUSTRIAL AND A CRAFT BASIS. IN PARTICULAR, WITHIN THE ORGANIZATION OF THE INTERVENER TRADE UNION IS ENCOMPASSED AN ENGINEERS' CRAFT UNION, THE NATIONAL UNION OF OPERATING ENGINEERS. THIS CIRCUMSTANCE, IT WAS ARGUED, BRINGS THIS CASE WITHIN THE PRINCIPLE OF THE SHERATON BROCK HOTEL CASE, C.C.H. CANADIAN LABOUR LAW REPORTER 916,205, WHERE A CRAFT UNIT WAS FOUND BY THE BOARD TO BE APPROPRIATE IN A CASE WHERE AN APPLICATION WAS MADE BY A CRAFT UNION AND WHERE THE INCUMBENT UNION WHICH HELD BARGAINING RIGHTS ON INDUSTRIAL BASIS, ITSELF FREQUENTLY ORGANIZED ON A CRAFT BASIS. AS THE BOARD STATED IN THAT CASE,

-- WHERE -- AN INCUMBENT UNION OR ITS PARENT BODY OR ITS SISTER LOCALS ARE IN THE HABIT OF ORGANIZING EITHER ON CRAFT OR INDUSTRIAL LINES, AS MAY SUIT THEIR RESPECTIVE PURPOSES AT ANY GIVEN TIME, GREAT WEIGHT SHOULD BE GIVEN TO CRAFT INTERESTS, DESPITE THE OBJECTION OF THE INCUMBENT.

THE BOARD WENT ON, HOWEVER, TO STATE THAT,

THE SITUATION MAY WELL BE OTHERWISE IN A CASE WHERE (1) THE OBJECTION IS REGISTERED BY THE EMPLOYER, OR (2) THE OBJECTION IS REGISTERED BY AN INCUMBENT WHICH IS ENGAGED IN DIVERSE FORMS OF ORGANIZATION, I.E., CRAFT OR INDUSTRIAL, BUT WHERE THE DIVERSITY IS DETERMINED BY THE NATURE OF THE OPERATION IN WHICH ORGANIZATION IS BEING CARRIED ON. --

THE LATTER CONSIDERATIONS ARE RELEVANT TO THE PRESENT CASE. FIRST, IN THIS CASE THE RESPONDENT DOES OBJECT, POINTING TO THE LONG HISTORY OF COLLECTIVE BARGAINING BETWEEN ITSELF AND THE INTERVENER. SECOND, THE EVIDENCE ESTABLISHES ONLY THAT WITHIN THE FRAMEWORK OF THE INTERVENER'S ORGANIZATION THERE IS OPERATED A TRADE UNION WHICH ORGANIZES ON CRAFT LINES. THE INTERVENER ITSELF TYPICALLY ORGANIZES ON AN INDUSTRIAL BASIS. THE PRESENT SITUATION THEN APPEARS TO THE BOARD TO BE DIFFERENT FROM THE SITUATION WITH WHICH IT DEALT IN THE SHERATON BROCK HOTEL CASE.

HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, THE GENERAL NATURE OF THE INTERVENER'S

ORGANIZATION, AND THE REPRESENTATIONS OF THE RESPONDENT, THE BOARD IS OF THE OPINION THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE. THE APPLICATION IS ACCORDINGLY DISMISSED."

INDEXED ENDORSEMENT - TERMINATION

9345-64-R: VANSER INVESTMENTS LIMITED (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 442, NIAGARA FALLS, ONTARIO (RESPONDENT). (GRANTED). (12 EMPLOYEES).

(RE: KING EDWARD HOTEL,  
NIAGARA FALLS, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT WAS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE KING EDWARD HOTEL, NIAGARA FALLS, THE PREDECESSOR OF THE PRESENT APPLICANT, AND THERE HAVE BEEN COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE RESPONDENT AND THE KING EDWARD HOTEL FOR SEVERAL YEARS. THE MOST RECENT OF THESE EXPIRED ON APRIL 30TH, 1964. IT WAS STATED ON BEHALF OF THE RESPONDENT THAT NOTICE TO BARGAIN WAS SERVED ON THE PREDECESSOR EMPLOYER ON MARCH 31ST, 1964. THERE IS NO EVIDENCE OF ANY MEETINGS HAVING TAKEN PLACE OR OF ANYTHING FURTHER HAVING BEEN DONE BY THE RESPONDENT WITH RESPECT TO THE NEGOTIATION OF A NEW COLLECTIVE AGREEMENT.

ON JULY 2ND, 1964, THE APPLICANT PURCHASED THE ASSETS AND TOOK POSSESSION OF THE KING EDWARD HOTEL, NIAGARA FALLS. THE APPLICANT ADMITS THAT IT IS THE SUCCESSOR EMPLOYER WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT TO THE FORMER EMPLOYER AT THE PREMISE AND IT HAS RECOGNIZED THE RIGHTS OF THE RESPONDENT TO BARGAIN COLLECTIVELY FOR EMPLOYEES OF THE APPLICANT.

APPROXIMATELY ONE WEEK AFTER THE PURCHASE BY THE APPLICANT OF THE ASSETS OF THE KING EDWARD HOTEL, THE PRESIDENT OF THE APPLICANT, MR. PAPAVICH, FOUND ON HIS DESK A LETTER FROM THE FINANCIAL SECRETARY OF THE RESPONDENT ADDRESSED TO MR. PAPAVICH AND DATED JUNE 29TH, 1964, PURPORTING TO BE A NOTICE UNDER SECTION 47A (2) OF THE LABOUR RELATIONS ACT AND REQUESTING A MEETING FOR THE PURPOSE OF COLLECTIVE BARGAINING. COUNSEL FOR THE APPLICANT ARGUED THAT THIS LETTER DID NOT CONSTITUTE NOTICE UNDER SECTION 47A; THAT NO OTHER NOTICE FROM THE RESPONDENT HAD BEEN RECEIVED BY THE APPLICANT; AND THAT, THEREFORE, UNDER SECTION 45 OF THE LABOUR RELATIONS ACT THE APPLICANT IS ENTITLED TO BRING THIS APPLICATION. SECTION 45 (1) APPLIES WHERE A TRADE UNION FAILS TO GIVE AN EMPLOYER NOTICE UNDER SECTION 11 WITHIN 60 DAYS FOLLOWING CERTIFICATION OR FAILS TO GIVE NOTICE UNDER SECTION 40. IN THE CIRCUMSTANCES OF THIS CASE, THERE BEING A SUCCESSOR TO THE EMPLOYER TO WHOM THE UNION WAS ENTITLED TO GIVE NOTICE, THE UNION'S ENTITLEMENT, IF ANY, WAS TO GIVE NOTICE UNDER SECTION 47A (2). WHERE NOTICE UNDER SECTION 47A (2) IS GIVEN IT HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11. IT WAS THE CONTENTION OF THE APPLICANT THAT WHERE NOTICE IS NOT GIVEN UNDER SECTION 47A (2) THIS HAS THE SAME EFFECT AS A FAILURE TO GIVE NOTICE UNDER SECTION 11 AND THAT THIS, THEREFORE, IS A CASE WHERE THE APPLICATION MAY



BE MADE UNDER SECTION 45 (1) AS FOR FAILURE TO GIVE NOTICE UNDER SECTION 11.

IT IS NOT NECESSARY TO DECIDE THE ISSUES RAISED BY THIS ARGUMENT, HOWEVER, AS COUNSEL FOR THE APPLICANT STATED THAT HE RELIED MORE HEAVILY ON AN ALTERNATIVE GROUND, NAMELY, THAT EVEN ASSUMING THE LETTER OF JUNE 29TH CONSTITUTED PROPER NOTICE TO THE APPLICANT UNDER SECTION 47A (2) SUCH NOTICE HAVING THE SAME EFFECT AS NOTICE UNDER SECTION 11, THE RESPONDENT HAS FAILED TO COMMENCE TO BARGAIN WITHIN 60 DAYS FROM THE GIVING OF THE NOTICE. IT IS NOT NECESSARY FOR THE BOARD TO DEAL HERE WITH ANY QUESTION ARISING UNDER SECTION 47A. THE ONLY QUESTION WITH WHICH THE BOARD DEALS COMES UNDER SECTION 45 (2).

THE EVIDENCE ESTABLISHES THAT ON TWO OCCASIONS A MEETING WAS ARRANGED BETWEEN THE APPLICANT AND THE RESPONDENT FOR THE PURPOSE OF COLLECTIVE BARGAINING. ON EACH OF THESE OCCASIONS THE RESPONDENT FAILED TO APPEAR. NO EXPLANATION WAS EVER OFFERED BY THE RESPONDENT NOR HAS A FURTHER MEETING BEEN REQUESTED. IT IS NOT SUGGESTED THAT THE APPLICANT HAS IN ANY WAY SOUGHT TO AVOID OR TO DELAY MEETING WITH THE RESPONDENT. ON SEPTEMBER 1ST, 1964, JUST OVER 60 DAYS AFTER THE DATE OF ITS NOTICE TO THE APPLICANT, THE RESPONDENT FILED AN APPLICATION FOR CONCILIATION SERVICES, BOARD FILE NO. 9278-64-C. IN THAT APPLICATION THE RESPONDENT STATED THAT THE PRESENT APPLICANT HAD REFUSED TO MEET WITH IT. THE RESPONDENT TRADE UNION HAS OFFERED NO EVIDENCE IN SUPPORT OF THAT STATEMENT WHICH IS INDEED CONTRADICTED BY THE EVIDENCE NOW BEFORE THE BOARD. ON THE AGREEMENT OF THE PARTIES, THE APPLICATION FOR CONCILIATION SERVICES WAS HEARD BY THE BOARD IMMEDIATELY FOLLOWING THE PRESENT APPLICATION. IT WAS NOT SUGGESTED THAT THE PRESENT APPLICATION, MADE ON SEPTEMBER 10TH, 1964, WAS PRECIPITATED BY THE APPLICATION FOR CONCILIATION SERVICES. IN ANY EVENT, IT IS OUR OPINION THAT IN CIRCUMSTANCES SUCH AS INFERENCE COULD NOT PROPERLY BE DRAWN FROM THE ORDER IN WHICH THE APPLICATIONS WERE MADE. THE BOARD IS OF OPINION THAT IN THE CIRCUMSTANCES OF THIS CASE, THE MERE FACT THAT AN APPLICATION FOR CONCILIATION SERVICES HAS BEEN MADE CAN HAVE NO WEIGHT.

IN THE DOMINION STORES LIMITED CASE, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER 916,047, THE BOARD STATED,

THE PURPOSE OF SECTION 43 (NOW SECTION 45) OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 (NOW SECTION 11) OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE



BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY.

IN THE PRESENT CASE THE RESPONDENT HAS OFFERED NO EXPLANATION FOR ITS FAILURE TO COMMENCE NEGOTIATIONS. IT IS CLEAR FROM THE EVIDENCE THAT THIS FAILURE IS ATTRIBUTABLE ONLY TO THE RESPONDENT. IT SHOULD BE REMARKED AS WELL THAT THE RESPONDENT HAS OFFERED NO EVIDENCE OF CONTINUING EMPLOYEE SUPPORT.

HAVING REGARD TO ALL THE CIRCUMSTANCES, THE BOARD DECLARES THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. IN THE CIRCUMSTANCES, I WOULD HAVE ORDERED THAT A VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT BE TAKEN."

INDEXED ENDORSEMENT - SUCCESSOR STATUS

9481-64-R: WONDER BAKERIES LIMITED (APPLICANT) v. RETAIL WHOLESALE AND CONFECTIONERY WORKERS' UNION, LOCAL 461 (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY WONDER BAKERIES LIMITED, AN EMPLOYER, MADE ON FORM 23 (APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION) IN WHICH IT SEEKS A DECLARATION THAT RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS' UNION, LOCAL 461, "HAS NOT ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF REPRESENTING A NON-UNIONIZED GROUP OF EMPLOYEES". THE FACTS DISCLOSED IN A LETTER FROM MR. G.G. SMITH, DIRECTOR OF INDUSTRIAL RELATIONS OF THE COMPANY, ACCOMPANYING THE APPLICATION ARE AS FOLLOWS:

THE COMPANY OPERATED TWO SHOPS OR DEPOTS IN PETERBOROUGH, ONE ON STEWART STREET AND THE OTHER ON DUBLIN STREET. THE EMPLOYEES AT THE STEWART STREET LOCATION WERE REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES BY THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461. A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT HEREIN AND THE UNION WAS ENTERED INTO IN 1962 AND CONTINUES IN EFFECT UNTIL OCTOBER 5, 1965. THE EMPLOYEES AT THE DUBLIN STREET LOCATION WERE "NON-UNIONIZED" AS THE LATTER PUTS IT. MR. SMITH'S LETTER READS IN PART: "THE DUBLIN STREET PREMISES ARE CLOSED AND THE WHOLE PETERBOROUGH BUSINESS WILL NOW BE CONDUCTED SOLELY UNDER THE NAME OF WONDER BAKERIES LIMITED", I.E., AT THE STEWART STREET LOCATION. THERE IS NO INDICATION EITHER IN THE LETTER OR IN THE APPLICATION, AS TO WHEN THESE EVENTS OCCURRED. FOR OUR PURPOSES, WE MAY ASSUME THAT THE TRANSFER TOOK PLACE RECENTLY.

AS MR. SMITH'S LETTER CONCEDES, THERE HAS BEEN NO SALE OF THE BUSINESS OR PART THEREOF WITHIN THE MEANING OF THAT TERM AS USED IN SECTION 47A OF THE LABOUR RELATIONS ACT AND THAT SECTION THEREFORE DOES NOT APPLY. THE BOARD DEALT WITH A SIMILAR SITUATION IN ITS DECISION IN THE WONDER BAKERIES (HAMILTON) CASE, O.L.R.B. MONTHLY REPORT, APRIL 1964 P. 36, TO WHICH REFERENCE MAY BE HAD.

IN SO FAR AS SECTION 47 OF THE ACT IS CONCERNED, THAT SECTION DEALS SOLELY WITH A SITUATION THAT ARISES WHEN ONE TRADE UNION CLAIMS TO BE THE SUCCESSOR OF ANOTHER TRADE UNION BY REASON OF A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION. NOTHING OF THAT SORT HAS OCCURRED HERE. RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461, HAS NOT MERGED OR AMALGAMATED WITH, OR TRANSFERRED ITS JURISDICTION TO ANOTHER TRADE UNION. THE COMPANY IS THEREFORE NOT ENTITLED TO ANY RELIEF UNDER SECTION 47. THE APPLICATION MADE BY THE APPLICANT IS MISCONCEIVED AND THEREFORE, PURSUANT TO SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS HEREBY DISMISSED.

THE BURDEN OF MR. SMITH'S COMPLAINT AS SET OUT IN THE LETTER IS THAT "IT SEEMS TO THE APPLICANT THAT IT IS ONLY FAIR THAT THE FIFTEEN (15) PREVIOUSLY NON-UNIONIZED EMPLOYEES NOT AUTOMATICALLY BE FORCED INTO A UNION". IT WOULD APPEAR THAT THIS IS AN ISSUE WHICH MUST BE RESOLVED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND THE LEGISLATION (SECTION 34) HAS PROVIDED A FORUM FOR RESOLVING THAT ISSUE, NAMELY, AN ARBITRATION BOARD WHICH MAY BE ESTABLISHED UNDER THE TERMS OF THE AGREEMENT BETWEEN THE PARTIES."

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

9412-64-U: AMILCARE (MIKE) ZANINI, CARRYING ON BUSINESS AS ZANINI AND COMPANY (APPLICANT) V. THE BRICKLAYERS' UNION No. 2 (AFFILIATED WITH THE BRICKLAYERS', MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT TRADE UNION CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF CERTAIN EMPLOYEES OF THE APPLICANT.

THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM THE 1ST DAY OF MAY, 1963, UNTIL THE 30TH DAY OF APRIL, 1965, AND THIS COLLECTIVE AGREEMENT WAS IN EFFECT AND BINDING UPON THE PARTIES AT ALL MATERIAL TIMES. THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED WERE EMPLOYED AT THE RENFORTH DRIVE TORONTO JOB SITE, WERE MEMBERS OF THE BRICKLAYERS' UNION No. 2 AND WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AT THE RELEVANT TIMES.

THE EVIDENCE ESTABLISHES THAT IT WAS THE USUAL PRACTICE OF THE APPLICANT AND OTHER CONTRACTORS TO HAVE TEN INCH CEMENT BLOCKS LAID BY ONE BRICKLAYER. THE COLLECTIVE AGREEMENT IN ARTICLE 25 PROVIDES AS FOLLOWS:-

IT IS AGREED THAT WHEN STANDARD AGGREGATE CONCRETE BLOCKS ARE USED HAVING A WIDTH OF (12") TWELVE INCHES OR OVER, SAME WILL BE LAID BY USING TWO BRICKLAYERS. THIS SHALL NOT HOWEVER APPLY TO LIGHT WEIGHT AGGREGATE BLOCKS SUCH AS CINDER, HAYDITE, OR SLAG.

THIS RAISES THE INFERENCE THAT BLOCKS OF LESS THAN TWELVE INCH WIDTH WERE INTENDED TO BE LAID BY ONE BRICKLAYER.

ON MONDAY, SEPTEMBER 21ST, THE APPLICANT BECAME AWARE THAT CERTAIN OF ITS EMPLOYEES AT THE RENFORTH JOB SITE WERE WORKING IN PAIRS WHEN LAYING TEN INCH CONCRETE BLOCKS. THESE EMPLOYEES WERE ACTING IN CONFORMITY WITH THE REQUIREMENTS OF A BY-LAW OF THEIR UNION AND WOULD BE SUBJECT TO BEING CHARGED AND POSSIBLY FINED BY THE UNION FOR NONCONFORMANCE WITH ITS RULES. THE UNION RULE IS EMBODIED IN AN AMENDMENT TO ITS BY-LAWS MADE AFTER THE PRESENT COLLECTIVE AGREEMENT HAD COME INTO EFFECT. THERE HAS BEEN NO AMENDMENT TO THE COLLECTIVE AGREEMENT ITSELF NOR DOES THE AGREEMENT REFER TO THE BY-LAWS OF THE UNION.

ON THE 21ST AND 22ND OF SEPTEMBER, THE APPLICANT ATTEMPTED TO NEGOTIATE WITH THE RESPONDENT UNION ON THIS MATTER AND FOR A TIME ALLOWED HIS EMPLOYEES TO WORK EITHER ONE MAN OR TWO MEN TO A TEN INCH BLOCK AS THEY SAW FIT. ULTIMATELY THE APPLICANT TOOK THE POSITION THAT HE WOULD REQUIRE HIS EMPLOYEES TO LAY TEN INCH BLOCKS INDIVIDUALLY AND NOT IN PAIRS. THE EMPLOYEES REFUSED TO LAY TEN INCH BLOCKS RATHER THAN RISK A FINE BY THE RESPONDENT.

AT APPROXIMATELY 10:30 A.M. ON SEPTEMBER 22ND, WORK CEASED AT THE JOB SITE WHILE EMPLOYEES AWAITED THE ARRIVAL OF THE BUSINESS AGENT OF THE RESPONDENT WHO IT WAS HOPED WOULD CLARIFY THE SITUATION. THE BUSINESS AGENT ONE ZANUSSI DID NOT ARRIVE AT THE SITE UNTIL APPROXIMATELY 2:00 P.M. HE WAS HEARD BY THE FOREMAN TO ADVISE THE MEN THAT IF THEY WOULD FOLLOW HIM TO THE UNION OFFICE HE WOULD GET THEM PERMITS FOR OTHER JOBS. FOLLOWING THIS THE EMPLOYEES HANDED IN THEIR TIME CARDS AND LEFT.

ON THE EVIDENCE, THE BOARD FINDS THAT THE RESPONDENT BRICKLAYERS UNION No. 2 CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANT AT THE RENFORTH DRIVE JOB SITE ON OR ABOUT SEPTEMBER 22ND, 1964.

IT APPEARS, HOWEVER, THAT FOLLOWING THE INCEPTION OF THE UNLAWFUL STRIKE ALL OF THE EMPLOYEES INVOLVED HANDED IN THEIR TIME CARDS AND REQUESTED THE RETURN OF THEIR UNEMPLOYMENT INSURANCE BOOKS. IT WAS STATED THAT ALL THESE EMPLOYEES HAVE SINCE OBTAINED OTHER EMPLOYMENT. COUNSEL FOR THE RESPONDENT ARGUED THAT THE EMPLOYEES IN QUESTION ARE NO LONGER EMPLOYEES OF THE APPLICANT AND THAT FOR THIS REASON, EVEN IF THE BOARD DID FIND THERE HAD BEEN AN UNLAWFUL STRIKE, IT OUGHT NOT TO ISSUE A DECLARATION TO THAT EFFECT.

THE JURISDICTION OF THE BOARD WITH RESPECT TO THE DECLARATION OF THE SORT HERE SOUGHT IS SET OUT IN SECTION 67 OF THE LABOUR RELATIONS ACT,

WHERE A TRADE UNION OR A COUNCIL OF TRADE UNIONS CALLS OR AUTHORIZES A STRIKE OR EMPLOYEES ENGAGE IN A STRIKE THAT THE EMPLOYER OR EMPLOYERS' ORGANIZATION CONCERNED ALLEGES WAS OR IS UNLAWFUL, THE EMPLOYER OR EMPLOYERS' ORGANIZATION MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE STRIKE WAS OR IS UNLAWFUL, AND THE BOARD MAY MAKE SUCH DECLARATION. R.S.O. 1960, c. 202, s. 67.

ON THE FACTS OF THIS CASE IT IS CLEAR THAT THE BOARD DOES HAVE JURISDICTION TO MAKE THE DECLARATION. THERE WAS A STRIKE BY PERSONS WHO AT THE TIME WERE EMPLOYEES OF THE APPLICANT; THAT STRIKE WAS CALLED OR AUTHORIZED BY THE RESPONDENT; AND THAT STRIKE WAS UNLAWFUL, AS THE BOARD HAS FOUND.

UNDER SECTION 67, HOWEVER, THE BOARD IS GRANTED A DISCRETION IN THE MAKING OF SUCH DECLARATION. THE PRINCIPLES WHICH GOVERN THE BOARD'S EXERCISE OF THIS DISCRETION HAVE BEEN SET OUT IN NUMEROUS CASES. PARTICULAR REFERENCE NEED ONLY BE MADE TO THE BALL BROTHERS LIMITED CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55 - '59, ¶16,091, C.L.S. 76-576. THERE IT WAS STATED THAT THE BOARD GENERALLY HELD THAT A DECLARATION SHOULD NOT BE ISSUED IN CASES IN WHICH A STRIKE HAS BEEN SETTLED BEFORE THE APPLICATION HAS COME ON FOR HEARING. COUNSEL FOR THE RESPONDENT ARGUED THAT THE CIRCUMSTANCES OF THE INSTANT CASE BROUGHT IT WITHIN THIS PRINCIPLE, INASMUCH AS THE EMPLOYEES CONCERNED HAVE OBTAINED EMPLOYMENT ELSEWHERE. IT CANNOT BE SAID THAT THIS CONSTITUTES "SETTLEMENT", OR ANYTHING ANALOGOUS TO "SETTLEMENT" OF THE STRIKE. IN THE INSTANT CASE THERE WAS AN UNLAWFUL STRIKE BY EMPLOYEES OF THE APPLICANT. THE APPLICANT EMPLOYER HAS DONE NOTHING TO PREVENT THE RETURN OF THOSE EMPLOYEES. THE ARGUMENT THAT THOSE EMPLOYEES HAVE NOW QUIT THEIR EMPLOYMENT WITH THE RESPONDENT PROVIDES NO REASON FOR THE BOARD'S EXERCISE OF ITS DISCRETION.

PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT, THE BRICKLAYERS' UNION No. 2 (AFFILIATED WITH THE BRICKLAYERS', MASONS', PLASTERERS' INTERNATIONAL UNION OF AMERICA) WHO ON OR AFTER SEPTEMBER 22ND, 1964, CALLED OR AUTHORIZED AN UNLAWFUL STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT AT ITS RENFORTH DRIVE JOB SITE CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT."

BOARD MEMBER D.M. STOREY DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THIS IS A CASE IN WHICH THE BOARD OUGHT NOT TO HAVE EXERCISED ITS DISCRETION FOR THE FOLLOWING REASONS:

THE STRIKE TERMINATED WHEN THE EMPLOYEES CEASED THEIR EMPLOYMENT WITH THE APPLICANT. FOLLOWING THIS THERE IS NO EVIDENCE OF ANY PICKETING NOR, INDEED, IS THERE ANY EVIDENCE THAT THE EMPLOYER REQUESTED THE UNION TO SEND IN HELP FOR THIS WORK AS HE IS REQUIRED TO DO BY THE COLLECTIVE AGREEMENT. HAD HE DONE SO AND BEEN REFUSED, THEN I WOULD AGREE WITH MY COLLEAGUES. HAVING FAILED TO DO SO, I MAINTAIN THAT THERE IS NO EVIDENCE THAT A STRIKE WAS IN PROGRESS. IN MY OPINION, NOTHING IS TO BE GAINED BY ISSUING A DECLARATION IN THIS CASE."



STATISTICAL TABLES FOR OCTOBER 1964

TABLE 1

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	OCTOBER 1964	1ST 7 MONTHS OF FISCAL YEAR. 1964-65	1963-64
I. CERTIFICATION	97	537	441
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	56	52
III. DECLARATION OF SUCCESSOR STATUS	1	3	20
IV. CONCILIATION SERVICES	-*	603	672
V. DECLARATION THAT STRIKE UNLAWFUL	2	28	27
VI. DECLARATION THAT LOCK-OUT UNLAWFUL	-	5	3
VII. CONSENT TO PROSECUTE	4	52	97
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	18	106	91
X. MISCELLANEOUS	3	14	12
TOTAL	133	1404	1415

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE 11

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	OCTOBER 1964	1ST 7 MONTHS OF FISCAL YEAR. 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	116	662	641

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	OCTOBER 1964	1ST 7 MONTHS OF FISCAL YEAR. 1964-65	1963-64
I. CERTIFICATION	74	498	472
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	60	68
III. DECLARATION OF SUCCESSOR STATUS	2	6	5
IV. CONCILIATION SERVICES	22	684	695
V. DECLARATION THAT STRIKE UNLAWFUL	3	27	26
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	2
VII. CONSENT TO PROSECUTE	1	47	104
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	108	94
IX. MISCELLANEOUS	2	11	4
TOTAL	126	1446	1470

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	OCTOBER 1ST 7 MONTHS FISCAL YEAR 1964	1964-65	1963-64	OCTOBER 1ST 7 MONTHS FISCAL YEAR 1964	1964-65	1963-64
I. CERTIFICATION						
GRANTED	52	365	340	1283	12200	9489
DISMISSED	11	86	81	220	4469	2876
WITHDRAWN	11	47	52	262	2167	703
TOTAL	<u>74</u>	<u>498</u>	<u>473</u>	<u>1765</u>	<u>18836</u>	<u>13068</u>
II. TERMINATION OF BARGAINING RIGHTS						
GRANTED	1	39	45	12	382	1200
DISMISSED	4	19	21	31	310	495
WITHDRAWN	-	2	2	-	82	85
TOTAL	<u>5</u>	<u>60</u>	<u>68</u>	<u>43</u>	<u>774</u>	<u>1780</u>

\* THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		OCTOBER	1ST 7 MONTHS	FISCAL YEAR.
		1964	1964-65	1963-64
<u>III. CONCILIATION SERVICES*</u>				
	REFERRED	19	630	652
	DISMISSED	2	26	12
	WITHDRAWN	1	28	31
	TOTAL	22	684	695
<u>IV. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
	GRANTED	3	11	5
	DISMISSED	-	4	3
	WITHDRAWN	-	12	18
	TOTAL	3	27	26
<u>V. DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
	GRANTED	-	1	-
	DISMISSED	-	1	1
	WITHDRAWN	-	3	1
	TOTAL	-	5	2
<u>VI. CONSENT TO PROSECUTE</u>				
	GRANTED	-	7	31
	DISMISSED	-	10	9
	WITHDRAWN	1	30	64
	TOTAL	1	47	104

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	OCTOBER 1964	1ST 7 MONTHS OF FISCAL YEAR. 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	13	16
POST-HEARING VOTE	1	15	38
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	3	7	8
POST-HEARING VOTE	4	34	36
BALLOTS NOT COUNTED	-	-	1
TOTAL	8	69	99

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	1ST 7 MONTHS OF FISCAL YEAR.		
	OCTOBER 1964	1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	-	8	22
	-	8	27

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING NOVEMBER 1964

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

8799-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EMANUEL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SHIPPER, RECEIVER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (161 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 377 .)

9282-64-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA - A.F.L., C.I.O., C.L.C. (APPLICANT) V. BUSY B DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE MEAT DEPARTMENTS OF THE RESPONDENT'S STORES IN WATERLOO, SAVE AND EXCEPT MEAT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FOUND THAT THE MEAT MANAGER, IS EXCLUDED FROM THE BARGAINING UNIT).

9392-64-R: FOOD HANDLERS LOCAL UNION 175 AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA A.F.L.-C.I.O. C.L.C. (APPLICANT) V. BUSY B DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORES IN WATERLOO, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, MEAT DEPARTMENT MANAGERS, ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT MANAGER AND ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

9425-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BOESE FOODS LTD. (RESPONDENT).

UNIT: "ALL HIGHWAY DRIVERS OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF ST. CATHARINES, SAVE AND EXCEPT DISPATCHERS, FOREMEN AND PERSONS ABOVE THE RANKS OF DISPATCHER AND FOREMAN." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9486-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. HI-LO EQUIPMENT (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PEEL, SAVE AND EXCEPT

FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (53 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO ALL OF THE EVIDENCE AND THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

IN THE CIRCUMSTANCES OF THIS CASE, I WOULD GIVE FULL WEIGHT TO THE PETITION SIGNED BY EMPLOYEES IN THE BARGAINING UNIT STATING THAT THEY DO NOT WISH THE APPLICANT UNION TO REPRESENT THEM. AS THIS WOULD REDUCE THE UNCHALLENGED MEMBERSHIP IN THE UNION TO LESS THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, I WOULD DIRECT THAT A REPRESENTATION VOTE BE CONDUCTED. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE INTERNATIONAL ASSOCIATION OF MACHINISTS."

9508-64-R: INDEPENDENT WORKERS UNION (APPLICANT) V. GENERAL WIRE & CABLE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COBOURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (186 EMPLOYEES IN THE UNIT).

9542-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. PORT COLBORNE IRON WORKS LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHT APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9549-64-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. MODEL LAUNDRY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, DRIVER SALESMEN AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT).

9559-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 1669 (APPLICANT) V. ROY CONSTRUCTION & SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT

WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND THE CIRCUMSTANCES OF THIS CASE).

9565-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HANOVER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

9566-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. CENTRIX ELECTRICAL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

9567-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. BELLEVUE ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9568-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. REXDALE ELECTRICAL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

9570-64-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. POWER SUPER MARKETS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT OAKVILLE, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT).

THE BOARD DETERMINED THIS UNIT, HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE TERMS OF THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT AND THE BOARD'S DECISION IN THE LONDON FOOD CITY CASE, O.L.R.B. MONTHLY REPORT, AUGUST, 1962, P. 151.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSE OF CLARITY THE BOARD DECLARES THAT STUDENTS EMPLOYED DURING OFF SCHOOL HOURS ARE INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. I WOULD NOT HAVE INCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE BARGAINING UNIT FOUND BY THE MAJORITY TO BE APPROPRIATE."

9573-64-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC (APPLICANT) V. REYNOLDS ALUMINUM CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

9575-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. KUDLAK BAIRD LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A 25 MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

9576-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ASSURED ELECTRICAL SERVICES LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AFTER CAREFULLY CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES RESPECTING THE STATEMENT OF DESIRE SIGNED BY SIX EMPLOYEES OF THE RESPONDENT, THE BOARD IS SATISFIED THAT THE SAID STATEMENT DOES NOT MATERIALLY AFFECT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE. WHILE WE DO NOT PROPOSE TO REVIEW ALL THE EVIDENCE IN DETAIL WE DO WISH TO REFER BRIEFLY TO SEVERAL MATTERS WHICH WERE OF PARTICULAR SIGNIFICANCE TO US IN REACHING THE ABOVE CONCLUSION. THE FIRST OF THESE IS THE ASSISTANCE WHICH THE RESPONDENT GAVE TO GROENEVELT, AN EMPLOYEE, BY SUGGESTING THAT HE CONSULT RESPONDENT'S SOLICITOR. IN THIS REGARD ATTENTION IS DIRECTED TO THE NATIONAL PAPER GOODS LIMITED CASE, (1945) D.L.S. 7-1205. SECONDLY, GROENEVELT APPEARED AT THE HEARING WITH THE RESPONDENT'S PRESIDENT. THIRDLY, GROENEVELT MADE IT QUITE PLAIN THAT HE WAS NOT BEFORE THE BOARD REPRESENTING THE EMPLOYEES WHO HAD SIGNED THE DOCUMENT IN QUESTION. IN FACT ON THE APPEARANCE SHEETS FILED WITH THE BOARD, GROENEVELT WAS SHOWN AS APPEARING ALONG WITH RESPONDENT'S PRESIDENT ON BEHALF OF THE RESPONDENT. FINALLY, THE PERSON WHO SUBMITTED THE DOCUMENT TO THE BOARD AND WHO ON ITS FACE WAS SHOWN AS THE AGENT OF THE EMPLOYEES IN QUESTION FOR THE PURPOSES SET OUT IN THE DOCUMENT DID NOT APPEAR BEFORE THE BOARD.

THE CONFLICTING EXPLANATIONS OFFERED BY THE PARTIES AS TO WHY THE "AGENT" DID NOT APPEAR WERE PURE HEARSAY AND AS SUCH HAVE NOT BEEN ACCORDED ANY WEIGHT BY THE BOARD.

IN VIEW OF OUR CONCLUSION SET OUT ABOVE IT HAS NOT BEEN NECESSARY TO DEAL WITH THE FIRST SUBMISSION OF THE APPLICANT RESPECTING THE FAILURE OF THE EMPLOYEES TO SUPPLY THE NAME OF THEIR EMPLOYER UNTIL AFTER THE TERMINAL DATE. HOWEVER, WE FEEL WE SHOULD POINT OUT TO THE APPLICANT THAT THE BOARD FELT THAT IT WAS FIXED WITH SUCH KNOWLEDGE BEFORE IT WAS SUPPLIED AND IN THE CIRCUMSTANCES HAD NO ALTERNATIVE IN THE INTERESTS OF NATURAL JUSTICE, BUT TO LIST THE MATTER FOR HEARING.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

9577-64-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES OF ONTARIO, LOCAL UNION No. 352 (APPLICANT) v. SACCO FUEL OIL DIVISION OF SCOTCH ANTHRACITE COAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (5 EMPLOYEES IN THE UNIT).

9578-64-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. SUNNYSIDE HOME FOR THE AGED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT SUPERVISORS, HOUSEKEEPERS, PERSONS ABOVE THE RANKS OF SUPERVISOR AND HOUSEKEEPER, CHIEF ENGINEER,

REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (62 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TWO NAMED PERSONS CLASSIFIED BY THE RESPONDENT AS HOUSEKEEPERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 378 )

9581-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. ARCHITECTURAL ACOUSTIC (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9584-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. NICOL'S ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

9585-64-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. KEN. DESLAURIE, LATHING PLASTERING & STUCCO (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9587-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. COMMERCIAL PROPERTY SERVICES LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT 56 CHURCH STREET, TORONTO, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9588-64-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FLUKE TRANSPORT LTD. (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9590-64-R: LODGE No. 1710, INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. H.H. MACHINING & REPAIRS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MCINTYRE TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

9594-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. S. AND M. ELECTRICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9597-64-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. PIONEER ELECTRIC EASTERN LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF DRAFTSMEN, PERSONS ABOVE THE RANK OF CHIEF DRAFTSMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 379 ).

9599-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. GUILD ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9600-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PRECISION CASTINGS LIMITED (RESPONDENT) V. PRECISION CASTINGS EMPLOYEES ASSOCIATION (INTERVENER).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

9602-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WILLIAM M. ALLIN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

9603-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN LINDSAY, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9605-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

9607-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) V. ROBERT McALPINE LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

9608-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

9609-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. BAIRD ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9610-64-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, (APPLICANT) V. SUPERTEST PETROLEUM CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WAREHOUSE AT BRANTFORD, SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

9611-64-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. TWIN CITY LAUNDRY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, DRIVER SALESMEN AND RETAIL STORE EMPLOYEES." (22 EMPLOYEES IN THE UNIT).

9616-64-R: UNITED TEXTILE WORKERS OF AMERICA, LOCAL 458 (APPLICANT) V. BENJAMIN GLOVE & CANVAS GOODS MANUFACTURERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

9622-64-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. ARMET INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY STAFF AND OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

9626-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. KROMAN'S ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9627-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. LAURENTIAN UNIVERSITY OF SUDBURY (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT IN SUDBURY, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

9629-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. ROBERTSON YATES CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS

OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

9631-64-R: LOCAL UNION #1940; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WILLIAM BANDEROB, CONSTRUCTION 498-VICTORIA ST. S., KITCHENER, ONTARIO (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9633-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. FIBEREZ OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NO MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

9639-64-R: LOCAL UNION #1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THOMAS CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE RESPONDENT REQUESTED A HEARING NO REASONS WERE ADVANCED IN SUPPORT THEREOF, DESPITE A COMMUNICATION WITH THE RESPONDENT POINTING OUT THE FACT THAT REASONS WERE NOT GIVEN IN THE REPLY AND DESPITE THE FACT THAT EXTRA TIME WAS PERMITTED. IN THESE CIRCUMSTANCES THE RESPONDENT'S REQUEST FOR A HEARING IS DENIED."

9640-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ANTONUCCI ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND



INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9641-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. EHRLICH ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9643-64-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. THE DOLE VALVE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

9646-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. ARMY NAVY & AIR FORCE VETERANS IN CANADA 341 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9647-64-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS' INTERNATIONAL UNION RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. BRANT ARTILLERY CLUB, UNIT 60 CANADIAN CORPS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9652-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. CANADIAN SANIVAC COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (2 EMPLOYEES IN THE UNIT).

9653-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. McNAMARA CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF TECK AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT, THAT IS, THE DISTRICT OF TEMISKAMING CONFLICTS WITH PREVIOUS AREAS SETTLED BY THE BOARD, NAMELY, THE FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING AND THE TOWNSHIPS ADJOINING THE TOWNSHIP OF TECK AS WELL AS WITH COLLECTIVE BARGAINING PATTERNS IN THE AREA. IN THESE CIRCUMSTANCES, THE BOARD DOES NOT PROPOSE TO DEPART FROM ITS ESTABLISHED GEOGRAPHIC AREA AT THIS TIME. FURTHER, SINCE THE ESTABLISHED AREA AGREES SUBSTANTIALLY WITH THAT PROPOSED BY THE RESPONDENT, THE BOARD SEES NO JUSTIFICATION FOR LISTING THE MATTER FOR HEARING..."

9654-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. ROBERT McALPINE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(3 EMPLOYEES IN THE UNIT).

9665-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. MANOR ELECTRICAL CONTRACTORS (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT)

9670-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. BEN'S ELECTRICAL CONTRACTORS (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9671-64-R: LOCAL 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. PROMPT ELECTRICAL CONTRACTOR (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9677-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #597 (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

9683-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. JACK KILLORAN ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

9687-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ADEQUATE WIRING LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9688-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ROSKO ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

9306-64-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L., C.I.O.- C.L.C. (APPLICANT) v. CANADA DRY BOTTLING COMPANY LIMITED (RESPONDENT).

IN THIS APPLICATION THE BOARD DETERMINED THAT TWO VOTING CONSTITUENCES WERE APPROPRIATE. A PRE-HEARING REPRESENTATION VOTE WAS HELD IN ONE CONSTITUENCY AND CERTIFICATION GRANTED FOR THE FOLLOWING UNIT:- "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, TRUCK SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND TRUCK SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	7
NUMBER OF BALLOTS CAST	8
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

WITH RESPECT TO THE OTHER VOTING CONSTITUENCY, CONSISTING OF:-

"ALL STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD BY THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND TRUCK SUPERVISOR AND OFFICE STAFF,"

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN (THIS) VOTING CONSTITUENCY WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE."

9496-64-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. MOFFATS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).



NUMBER OF NAMES ON REVISED VOTERS' LIST	7
NUMBER OF BALLOTS CAST	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

9517-64-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (APPLICANT) V. THE METAL CRAFT COMPANY LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE) LOCAL 520 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GRIMSBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	27
NUMBER OF BALLOTS CAST	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	11

9537-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. THE SOUTH PEEL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS HOSPITAL AT THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	7
NUMBER OF BALLOTS CAST	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

8803-64-R: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PURE SPRING (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ROUTE SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (152 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	152
NUMBER OF BALLOTS CAST	146
NUMBER OF SPOILED BALLOTS	2
BALLOTS SEGREGATED (NOT COUNTED)	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	76



NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

56

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR REASONS TO BE GIVEN IN WRITING, THE BOARD IS OF THE  
OPINION THAT IT SHOULD NOT ENTERTAIN THE ALLEGATIONS OF THE  
RESPONDENT CONTAINED IN ITS LETTER OF SEPTEMBER 9TH, 1964."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

FOR REASONS TO BE GIVEN IN WRITING, I AM OF THE OPINION  
THAT THE BOARD SHOULD ENTERTAIN THE ALLEGATIONS OF THE RESPONDENT  
CONTAINED IN ITS LETTER OF SEPTEMBER 9TH, 1964."

9170-64-R: HOTEL, RESTAURANT, BARTENDERS' INTERNATIONAL UNION, LOCAL 442, NIAGARA  
FALLS, ONTARIO (APPLICANT) V. HOCO LIMITED CARRYING ON BUSINESS AS PARK MOTOR HOTEL  
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE PARK MOTOR HOTEL AT NIAGARA FALLS,  
SAVE AND EXCEPT HEADS OF DEPARTMENTS, THOSE ABOVE THE RANK OF HEAD OF DEPARTMENT,  
SECRETARIES TO THE MANAGER AND ASSISTANT MANAGERS, AUDIT DEPARTMENT EMPLOYEES,  
SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGU-  
LARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (87 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	87
NUMBER OF BALLOTS CAST	77
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	55
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20

IN A MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES IT WAS AGREED THAT  
THERE SHOULD BE TWO BARGAINING UNITS, ONE AS ABOVE AND THE OTHER TO COMPRISE:

"ALL STUDENTS EMPLOYED BY THE RESPONDENT  
AT THE PARK MOTOR HOTEL, NIAGARA FALLS  
DURING SCHOOL VACATION PERIODS".

IT WAS ALSO AGREED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES DESCRIBED  
ABOVE, ON A DATE TO BE SET BY THE REGISTRAR AFTER JULY 1ST, 1965.

9298-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ROYAL OTTAWA  
SANATORIUM (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL  
UNION 869 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SANATORIUM AT OTTAWA, SAVE AND  
EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES,

GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (85 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM 'TECHNICAL PERSONNEL' COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIO-LOGICAL TECHNICIANS.

FOR THE PURPOSES OF CLARITY THE BOARD FURTHER DECLARES THAT THE BARGAINING UNIT INCLUDES NURSING ASSISTANTS AND REGISTERED NURSING ASSISTANTS.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS PROFESSIONAL SOCIAL WORKERS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT WARD CLERKS AND SWITCHBOARD OPERATORS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF."

NUMBER OF NAMES ON REVISED VOTERS' LIST	79
NUMBER OF BALLOTS CAST	75
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	63
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

2370-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ROY CONSTRUCTION AND SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE FEDERAL BUILDING IN TIMMINS, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	55
NUMBER OF BALLOTS CAST	46
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	40
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN ITS APPLICATION THE APPLICANT PROPOSED AN 'ALL EMPLOYEE' UNIT. AT THE HEARING IN THIS MATTER THE RESPONDENT, FOLLOWING THE SUBMISSION MADE IN ITS REPLY, URGED THE ADOPTION OF A UNIT DESCRIBED AS CARPENTERS, CARPENTERS' APPRENTICES AND CARPENTERS' HELPERS. THE APPLICANT OPPOSED

THIS DESCRIPTION BUT INDICATED IT WAS PREPARED TO CONSIDER THE EXCLUSION OF CERTAIN TRADES FROM THE 'ALL EMPLOYEE' UNIT WHICH, IN EFFECT, WOULD HAVE MEANT A UNIT CONSISTING OF THE CLASSIFICATIONS PROPOSED BY THE RESPONDENT.

THE PRACTICE OF THE BOARD HAS BEEN NOT TO INCLUDE CARPENTERS' HELPERS IN THE REGULAR CARPENTERS CRAFT UNIT. AGAIN IT HAS NOT BEEN THE PRACTICE OF THE BOARD (ABSENT AGREEMENT OF THE PARTIES) IN 'ALL EMPLOYEE' CONSTRUCTION INDUSTRY UNITS TO EXCEPT THEREFROM SPECIAL CLASSIFICATIONS OTHER THAN THOSE PERFORMING MANAGERIAL FUNCTIONS, OFFICE STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS. FURTHERMORE IT IS CLEAR THAT IN QUITE A FEW CASES FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT THE BOARD HAS FOUND AN 'ALL EMPLOYEE' UNIT TO BE AN APPROPRIATE ONE. SEE, FOR EXAMPLE, L'ABBE CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1964, P. 12, A CASE INVOLVING CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L.; AND NOREN CONSTRUCTION LIMITED, IBID, AT P.11, A CASE INVOLVING LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

HAVING REGARD TO THESE CONSIDERATIONS AND TO ALL THE CIRCUMSTANCES IN THIS CASE INCLUDING THE ABSENCE OF ANY EVIDENCE OR, INDEED, SUGGESTION THAT THE APPLICANT UNION IS UNABLE TO ADMIT TO MEMBERSHIP PERSONS OTHER THAN THOSE ENGAGED IN ITS CRAFT OR THAT THE APPLICANT DOES NOT INTEND TO BARGAIN ON BEHALF OF SUCH PERSONS."

THE BOARD FOUND APPROPRIATE THE UNIT DESCRIBED ABOVE.

9417-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PYRENE MANUFACTURING COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	32
NUMBER OF BALLOTS CAST	32
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

9497-64-R: LONDON PHARMACEUTICAL WORKERS UNION LOCAL #1618 CANADIAN LABOUR CONGRESS (APPLICANT) V. CANADA DUPHAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT PRODUCTION MANAGER, PERSONS ABOVE THE RANK OF PRODUCTION MANAGER, LABORATORY PERSONNEL, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (33 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	33
NUMBER OF BALLOTS CAST	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

14

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

8568-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL No. 204 (APPLICANT) V. BAY-ADELAIDE HOLDING 33 ADELAIDE STREET WEST, TORONTO ONT. (RESPONDENT). (8 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION, WE ARE NOT SATISFIED THAT AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

IN THE RESULT, THE APPLICATION MUST BE DISMISSED."

9558-64-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WONDER BAKERIES LIMITED (RESPONDENT) V. RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS UNION, LOCAL 461 (INTERVENER). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN ORALLY AT THE HEARING, THIS APPLICATION IS UNTIMELY AND ACCORDINGLY MUST BE DISMISSED."

9564-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. VERITAS LIMITED (RESPONDENT). (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR REASONS GIVEN ORALLY AT THE HEARING, THIS APPLICATION IS DISMISSED."

9619-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. THE CORPORATION OF THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY (RESPONDENT). CANADIAN UNION OF PUBLIC EMPLOYEES - SUCCESSOR TO THE NATIONAL UNION OF PUBLIC EMPLOYEES (INTERVENER). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AT THE RESPONDENT'S GLEN STORE DUN LODGE AT CORNWALL.

THE RESPONDENT BY BY-LAW #3200 PASSED THE 15TH DAY OF APRIL, 1954, DECLARED THAT "THE LABOUR RELATIONS ACT, R.S.O. 1950, CHAPTER 194, SHALL NOT APPLY TO THE CORPORATION OF THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM". THE APPLICANT ARGUED THAT SINCE THE LABOUR RELATIONS ACT IS NOW CITED AS R.S.O. 1960 CHAPTER 202, THE BY-LAW ENACTED BY THE



RESPONDENT WHEREIN THE LABOUR RELATIONS ACT WAS REFERRED TO AS IT WAS THEN CITED I.E., AS R.S.O. 1950 CHAPTER 194, IS THEREFORE INOPERATIVE SINCE IT DOES NOT CITE THE LABOUR RELATIONS ACT AS IT IS NOW DESCRIBED. THE BOARD DOES NOT FIND ANY SUBSTANCE TO THE APPLICANT'S ARGUMENT.

THE BOARD ACCORDINGLY FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT, AND THAT IT HAS DECLARED PURSUANT TO THE PROVISIONS OF SECTION 89 (AS IT IS NOW DESCRIBED) OF THE LABOUR RELATIONS ACT THAT THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM.

IN VIEW OF THE ACTION OF THE RESPONDENT IN MAKING SUCH A DECLARATION, THE BOARD HAS NO JURISDICTION TO PROCESS THIS APPLICATION FURTHER AND THIS APPLICATION IS ACCORDINGLY TERMINATED."

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

9262-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. 804 (APPLICANT) V. WM. R. ROBERTS SALES LTD. (RESPONDENT).

UNIT: "ALL JOURNEYMEN ELECTRICIANS, APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KITCHENER, SAVE AND EXCEPT SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	13
NUMBER OF BALLOTS CAST	13
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

ON SEPTEMBER 16, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON THE DATE OF THE MAKING OF THE APPLICATION, THE EMPLOYEES AFFECTED WERE EMPLOYED ON JOB SITES IN THE COUNTIES OF WATERLOO AND WELLINGTON. THE APPLICANT SEEKS AN AREA CORRESPONDING TO ITS JURISDICTION, NAMELY, THE COUNTIES OF PERTH, WATERLOO, WELLINGTON, GREY, BRUCE, DUFFERIN AND PART OF HALTON. THE COUNTIES OF PERTH AND BRUCE ARE INCLUDED IN ANOTHER AREA WHICH THE BOARD HAS FOUND TO BE APPROPRIATE, NAMELY, THE COUNTIES OF ELGIN, MIDDLESEX, OXFORD, PERTH, HURON AND BRUCE. A SISTER LOCAL OF THE APPLICANT, LOCAL 120, IS A PARTY TO A COLLECTIVE AGREEMENT BETWEEN THE LONDON BUILDERS' EXCHANGE AND THE BUILDING & CONSTRUCTION TRADES COUNCIL FOR THE SAME SIX COUNTIES. THIS AGREEMENT PURPORTS TO COVER THESE SIX COUNTIES, ALTHOUGH THERE MAY BE SOME QUESTION ABOUT THIS IN SO FAR AS I. B. E. W., LOCAL 120 IS CONCERNED. CERTAINLY IT IS CLEAR FROM THE EVIDENCE BEFORE US THAT THE APPLICANT IN THIS CASE, LOCAL 804, HAS COLLECTIVE AGREEMENTS COVERING AT LEAST ONE OF THE SIX COUNTIES, PERTH, AND PERHAPS BRUCE. WE DO NOT KNOW WHETHER ANY CONTRACTOR HAVING A COLLECTIVE AGREEMENT WITH LOCAL 120 ALSO HAS A COLLECTIVE AGREEMENT WITH LOCAL 804. WHILE THE BOARD WAS ASSURED BY A REPRESENTATIVE OF THE

INTERNATIONAL UNION THAT IN PRACTICE THERE WAS NO AREA CONFLICT BETWEEN THE AGREEMENTS OF THE TWO LOCALS, WE ARE NOT PERSUADED BY A READING OF THE AGREEMENTS IN QUESTION THAT A CONFLICT DOES NOT EXIST IN FACT.

THIS CASE IS COMPLICATED FURTHER BY DECISIONS OF THE BOARD RECOGNIZING TWO SEPARATE AREAS FOR THE JOB SITES AFFECTED BY THE APPLICATION, ONE BEING THE COUNTY OF WELLINGTON AND THE OTHER PART OF THE TOWNSHIP OF WATERLOO IN THE COUNTY OF WATERLOO. THESE AREAS WERE SET HAVING REGARD TO AREA PATTERNS OF COLLECTIVE BARGAINING ESTABLISHED BY OTHER UNIONS AND EMPLOYERS. THE DIFFERING AREAS FOUND IN COLLECTIVE AGREEMENTS, (DUE MAINLY TO WIDE DIVERGENCIES IN AREA JURISDICTION ALLOCATED TO LOCALS OF DIFFERENT UNION) RAISE SERIOUS DIFFICULTIES IN THE ESTABLISHMENT OF UNIFORM GEOGRAPHIC AREAS BY THE BOARD. YET UNIFORMITY IS DESIRABLE IF MULTI-PARTY BARGAINING IS REGARDED AS A DESIRABLE OR EVEN NECESSARY GOAL.

IN THE PRESENT CASE, TO GRANT THE AREA SOUGHT BY THE APPLICANT WOULD MEAN A CONFLICT WITH THE SIX-COUNTY AREA PREVIOUSLY ESTABLISHED BY THE BOARD. TO ENLARGE ON THE PRESENT AREA IN THE KITCHENER-WATERLOO AREA WOULD CREATE DIFFICULTIES FOR OTHER ESTABLISHED RELATIONSHIPS IN THE AREA. FURTHERMORE, WE RECOGNIZE THAT IN DEPARTING FROM PREVIOUS ESTABLISHED PATTERNS WE MAY BE AFFECTING OTHER UNIONS THE AREA JURISDICTION OF WHOSE LOCALS IS, LIKE THAT OF THE APPLICANT, MUCH LARGER THAN THE AREA JURISDICTION OF LOCALS WHICH HAVE BEEN BEFORE THE BOARD IN OTHER CASES. IT IS QUITE LIKELY THAT THE AREA JURISDICTIONS OF THE LOCALS OF THESE OTHER UNIONS DIFFER FROM THAT OF THE APPLICANT. AT ALL EVENTS, BEFORE BREAKING NEW GROUND, THESE OTHER UNIONS AND THE EMPLOYERS WITH WHOM THEY BARGAIN SHOULD HAVE AN OPPORTUNITY OF STATING THEIR VIEWS.

IN SEEKING AT LEAST A TEMPORARY SOLUTION TO THIS DILEMMA, ONE WHICH, WE MAY ADD, THE PARTIES IN THIS CASE FULLY APPRECIATE, THE BOARD HAS CONSIDERED THE ADVISABILITY OF GRANTING AN "AT AND OUT OF" UNIT. WHILE BY AND LARGE THE CONSTRUCTION INDUSTRY PANEL HAS NOT VIEWED SUCH UNITS WITH FAVOUR, IT RECOGNIZES THAT IN CERTAIN SITUATIONS THIS TYPE OF UNIT HAS MORE ADVANTAGES THAN DISADVANTAGES. THUS, IN CASES INVOLVING THE ENGINEERS (CRANE RENTALS) THE BOARD HAS GRANTED SUCH A UNIT. THE SAME IS TRUE WITH RESPECT TO TILE AND TERRAZZO WORKERS. IN FACT, THIS TYPE OF UNIT HAS BEEN GRANTED WITH RESPECT TO EMPLOYERS LOCATED IN KITCHENER (SEE HILL & GLASSER LIMITED, O.L.R.B. MONTHLY REPORT, JUNE, 1963, p.129). HAVING REGARD TO THE NATURE OF THE TRADE IN THE PRESENT CASE, TO THE HIRING PRACTICES AS EVIDENCED BY THE AGREEMENTS ON FILE WITH THE BOARD, AND TO THE OTHER FACTORS REVIEWED ABOVE WE HAVE COME TO THE CONCLUSION THAT AS A TEMPORARY MEASURE THE "AT AND OUT OF" UNIT IS A RELATIVELY SATISFACTORY SOLUTION TO THE PROBLEM."

ON OCTOBER 28, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER THE ELIGIBILITY OF ONE, R. GLASS, WAS CHALLENGED BY THE RESPONDENT. GLASS WAS AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE THE VOTE WAS DIRECTED, NAMELY SEPTEMBER 16, 1964. HE WAS LAID OFF ON SEPTEMBER 18 BECAUSE OF LACK OF WORK AND SEVERAL DAYS LATER WAS HANDED HIS UNEMPLOYMENT INSURANCE BOOK AND HIS VACATION WITH PAY BOOK. THE

PARTIES MET ON SEPTEMBER 22 TO SETTLE THE DETAILS OF THE VOTE. A VOTER'S LIST WAS PREPARED AND AT THAT TIME THE APPLICANT WAS TOLD BY THE RESPONDENT THAT GLASS HAD BEEN TEMPORARILY LAID OFF. THE VOTER'S LIST CONTAINED THE NAME OF R. GLASS. DURING THE TAKING OF THE VOTE GLASS APPEARED AND REQUESTED A BALLOT. HE WAS PERMITTED TO VOTE BUT HIS BALLOT, QUITE PROPERLY, WAS SEGREGATED AND THE BALLOT BOX SEALED .

AT THIS TIME GLASS WAS WORKING FOR ANOTHER EMPLOYER. IT SEEMS CLEAR THAT HE REGARDED HIS LAY-OFF AS TEMPORARY AND HE STATED HE HOPES TO RETURN TO WORK FOR THE RESPONDENT. ON THE OTHER HAND THERE IS NO EVIDENCE TO SUGGEST THAT EITHER OF THE PARTIES OR GLASS HAD ANY REASONABLE EXPECTATION THAT HE WOULD RETURN TO WORK PRIOR TO THE TAKING OF THE VOTE. NOR IS THERE ANY EVIDENCE AS TO WHEN GLASS MIGHT RETURN TO WORK. IN OTHER WORKDS THIS IS A CLEAR CASE OF AN INDEFINITE LAY-OFF. IN THESE CIRCUMSTANCES THIS CASE IS DISTINGUISHABLE FROM THE COBALT REFINING LIMITED CASE, BOARD FILE NO. 4491-62-R AND FALLS SQUARELY WITHIN THE PRINCIPLES SET OUT IN THE RIX-ATHABASKA CASE, O.L.R.B. MONTHLY REPORT, JULY, 1961, P. 127. ACCORDINGLY THE BOARD FINDS THAT AT THE TIME OF THE VOTE R. GLASS WAS NOT AN ELIGIBLE VOTER.

THE BOARD THEREFORE DIRECTS THAT THE SEGREGATED BALLOT OF GLASS BE DESTROYED AND FURTHER DIRECTS THE REGISTRAR TO PROCEED WITH THE COUNTING OF THE BALLOTS."

2337-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. F. W. WOOLWORTH CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN LINDSAY, SAVE AND EXCEPT ASSISTANT STORE MANAGER, THOSE ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	13
NUMBER OF BALLOTS CAST	13
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

9416-64-R: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS (APPLICANT) V. GENERAL FOODS, LIMITED (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS COBOURG PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALARIED TECHNICIANS, EMPLOYEES IN THE RESEARCH CENTRE AND IN THE PLANT LABORATORIES." (343 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	343
NUMBER OF BALLOTS CAST	336
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	167
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	169



9450-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. GREENWOOD READY-MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ORANGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTER'S LIST	5
NUMBER OF BALLOTS CAST	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

9519-64-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. E. HARRIS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, TECHNICAL AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	6
NUMBER OF BALLOTS CAST	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

9545-64-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. LOCAL #246 (APPLICANT) V. TIMBERLAND-ELLCOTT LIMITED (RESPONDENT). (12 EMPLOYEES).

9574-64-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GARTSHORE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (30 EMPLOYEES).

9579-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) V. GOLDLIST CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

9598-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS LOCAL 721 (APPLICANT) V. LAURELCREST INVESTMENTS (RESPONDENT). (13 EMPLOYEES).

9618-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) V. ALLIED CONVEYOR LTD. (RESPONDENT). (9 EMPLOYEES).

9628-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. HODGE SALES & SERVICE (RESPONDENT). (8 EMPLOYEES).

9632-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION No. 1669 (APPLICANT) V. HORTON STEEL WORKERS LIMITED (RESPONDENT). (3 EMPLOYEES).



9638-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT)  
V. MILNE & NICHOLLS LTD. (RESPONDENT). (2 EMPLOYEES).

9689-64-R: RETAIL CLERKS, INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER). (26 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED  
OF DURING NOVEMBER

9495-64-R: MANNING BISCUIT CO. OF CANADA LTD. (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 141, WAREHOUSEMEN & MISCELLANEOUS DRIVERS (RESPONDENT). (2 EMPLOYEES). (GRANTED).

(RE: MANNING BISCUIT CO. OF CANADA LTD.,  
LONDON, ONTARIO).

UNIT: "ALL DRIVERS AND WAREHOUSEMEN OF MANNING BISCUIT CO. OF CANADA LTD. AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES ON REVISED VOTERS' LIST	2
NUMBER OF BALLOTS CAST	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	2

9596-64-R: MR. B.G. MCGUIN 684 LINCOLN ROAD, WINDSOR, ONTARIO (APPLICANT) V. LOCAL 944, INTERNATIONAL UNION OF OPERATING ENGINEERS, 83 RIVERSIDE DRIVE, WEST, WINDSOR, ONTARIO (RESPONDENT). (DISMISSED). (5 EMPLOYEES).

(RE: PRODUCTION PAINTING,  
WINDSOR, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 379 ).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING  
NOVEMBER

9460-64-U: AMILCARE (MIKE) ZANINI, CARRYING ON BUSINESS AS ZANINI AND COMPANY (APPLICANT) V. WILLIAM TYMCHUK ET AL (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE LETTER FROM THE APPLICANT DATED NOVEMBER 10TH, 1964, THIS APPLICATION IS DISMISSED."

9625-64-U: THE KVP COMPANY LIMITED (APPLICANT) V. THE LUMBER AND SAWMILL WORKERS'

UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE EVIDENCE IS ABUNDANTLY CLEAR THAT EMPLOYEES OF THE KVP COMPANY LIMITED DID ON OCTOBER 29TH, FROM CAMP NUMBER 8, ON NOVEMBER 2ND, FROM CAMPS NUMBER 500, 515 AND 516, AND ON NOVEMBER 3RD, 1964, FROM CAMP NUMBER 700, WALK OUT AND REFUSE TO WORK IN COMBINATION AND IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING AND THAT THEIR ACTIONS IN THIS RESPECT CONSTITUTE AN UNLAWFUL STRIKE WHICH TOOK PLACE DURING THE TERM OF A COLLECTIVE AGREEMENT IN VIOLATION OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.

WHILE THERE MAY BE SOME DOUBT AS TO WHETHER THE EVIDENCE ESTABLISHES THAT THE UNION CALLED THE UNLAWFUL STRIKE, WE ARE CONSTRAINED TO FIND FROM THE UNEXPLAINED CONDUCT AND ACTIONS OF, AND APPARENT PARTICIPATION BY THE UNION'S OFFICERS, LUCIEN ROUSSY, EUGENE MCGREGOR AND J. LAFORCE IN THE STRIKE, THAT THESE OFFICERS, WHO MUST BE TAKEN AT THE TIME TO HAVE BEEN ACTING FOR THE UNION, DID APPROVE, ABET AND AUTHORIZE THE STRIKE.

WE ARE NOT PERSUADED IN THE CIRCUMSTANCES OF THIS CASE, THAT THERE IS ANY TENABLE OR REASONABLE BASIS WHATEVER WHICH SHOULD INDUCE THIS BOARD, IN THE INTERESTS OF GOOD INDUSTRIAL RELATIONS, TO DECLINE, ON THE GROUNDS OF ITS DISCRETION, TO ISSUE A DECLARATION. ON THE CONTRARY, THE CIRCUMSTANCES DEMONSTRATE STRONG REASONS IN FAVOUR OF THE ISSUANCE OF THE DECLARATION.

IN THE RESULT, WE DECLARE THAT THE RESPONDENT UNION DID IN OR ABOUT THE 29TH DAY OF OCTOBER AND THE 2ND AND 3RD DAYS OF NOVEMBER, 1964, AUTHORIZE AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT AT ITS CAMPS NUMBER 8, 500, 515, 516 AND 700."

9630-64-U: ANTHES IMPERIAL LIMITED (APPLICANT) V. E. BASSO ET AL (RESPONDENTS). (WITHDRAWN).

9659-64-U: A. V. HALLAM LATHING AND PLASTERING LIMITED (APPLICANT) V. LATHERS INTERNATIONAL UNION, LOCAL 97 (RESPONDENT). (WITHDRAWN).

9660-64-U: R.S.C. BOTHWELL ASSOCIATES LIMITED (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30. (RESPONDENT). (WITHDRAWN).

9661-64-U: R.S.C. BOTHWELL ASSOCIATES LIMITED (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30. (THE BUILT-UP ROOFERS' DAMP AND WATERPROOFERS' SECTION) (RESPONDENT). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

9155-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. INTERCITY TYPE-SETTING LIMITED, ELMER STEWART AND DAVID RUSSELL (RESPONDENTS).

ON SEPTEMBER 21, 1964, THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST

THE RESPONDENT, INTERCITY TYPESETTING LIMITED, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, IT SOUGHT TO COMPEL PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM TO CEASE TO BE MEMBERS OF A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 51 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, WHILE A TRADE UNION CONTINUED TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT WHICH INCLUDED PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON, THE SAID RESPONDENT DID BARGAIN WITH THE SAID PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM.

THE APPROPRIATE DOCUMENTS WILL ISSUE.

THE APPLICATION AS IT AFFECTS THE RESPONDENTS, ELMER STEWART AND DAVID RUSSELL, STANDS ADJOURNED SINE DIE."

ON NOVEMBER 16, 1964, THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT, ELMER STEWART, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, HE SOUGHT TO COMPEL PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM TO CEASE TO BE MEMBERS OF A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 51 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, WHILE A TRADE UNION CONTINUED TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT WHICH INCLUDED PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON, THE SAID RESPONDENT DID BARGAIN WITH THE SAID PETER SCOTT, HAROLD PARROTT AND ELVIN WILSON OR ANY OF THEM.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT, DAVID RUSSELL, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH, 1964, AND JUNE 24TH, 1964, HE SOUGHT TO COMPEL PETER SCOTT AND HAROLD PARROTT OR EITHER OF THEM TO CEASE TO BE MEMBERS OF A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 51 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN JUNE 19TH,

1964, AND JUNE 24TH, 1964, WHILE A TRADE UNION CONTINUED TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT WHICH INCLUDED PETER SCOTT AND HAROLD PARROTT, THE SAID RESPONDENT DID BARGAIN WITH THE SAID PETER SCOTT AND HAROLD PARROTT OR EITHER OF THEM."

9413-64-U: AMILCARE (MIKE) ZANINI, CARRYING ON BUSINESS AS ZANINI AND COMPANY (APPLICANT) V. DON WILLIAMS, JOHN ZANUSSI, AND THE BRICKLAYERS' UNION No. 2 (AFFILIATED WITH THE BRICKLAYERS', MASONS PLASTERERS INTERNATIONAL UNION OF AMERICA) (RESPONDENTS). (DISMISSED).

9514-64-U: PAOLATTO INDUSTRIAL FLOORS, (APPLICANT) V. WINDSOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 345, LESTER BECK ESQ. ET AL (RESPONDENTS). (WITHDRAWN).

9516-64-U: BRAVO CEMENT CONTRACTING LIMITED (APPLICANT) V. CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 345, LESTER BECK, ESQ. ET AL (RESPONDENTS). (WITHDRAWN).

9554-64-U: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 47 (APPLICANT) V. ALEXANDER METAL PRODUCTS Co. LTD. (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 12 AND 69 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN THE 16TH DAY OF JULY, 1964, AND THE 17TH DAY OF SEPTEMBER, 1964, IT FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 47.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

9623-64-U: THE KVP COMPANY LIMITED (APPLICANT) V. THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

THAT THE SAID RESPONDENT BEING A TRADE UNION DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT, IN THAT IT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT COMPANY AT ITS WOODS OPERATIONS NORTHWEST OF ESPANOLA, ONTARIO, AND AT RAMSEY, ONTARIO, AND AT ITS CAMP NORTHEAST OF BENNY,



ONTARIO, COMMENCING ON OR ABOUT THE 29TH DAY OF OCTOBER, 1964.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATION OF THE APPLICANT THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT."

9624-64-U: THE KVP COMPANY LIMITED (APPLICANT) V. LUCIEN ROUSSY ET AL (RESPONDENTS

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST EACH OF THE RESPONDENTS, LUCIEN ROUSSY, PAUL CHOUINARD, JOE LAFORCE AND DAMIEN LABELLE, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

THAT EACH OF THE SAID RESPONDENTS DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT, IN THAT BEING AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION, NAMELY, THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2537, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, HE DID COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT, WHICH COMMENCED ON OR ABOUT THE 29TH DAY OF OCTOBER, 1964, AND WHICH TOOK PLACE AT THE APPLICANT'S WOODS OPERATIONS NORTHWEST OF ESPANOLA, ONTARIO, AND AT RAMSEY, ONTARIO, AND AT ITS CAMP NORTHEAST OF BENNY, ONTARIO.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"I DISSENT. WHILE I CONCUR WITH THE MAJORITY THAT CONSENT TO INSTITUTE PROSECUTIONS SHOULD BE GRANTED WITH RESPECT TO THE RESPONDENT, LUCIEN ROUSSY, PAUL CHOUINARD AND JOE LAFORCE, IN THE CASE OF THE RESPONDENT, DAMIEN LABELLE, THERE IS IN MY OPINION NO EVIDENCE TO SUPPORT THE ALLEGATION OF THE APPLICANT THAT THE RESPONDENT LABELLE COUNSELLED, PROCURED, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT."

9662-64-U: RSC. BOTHWELL ASSOCIATES LIMITED (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30 AND WILLIAM MUNRO AND ERNEST FERGUSON (RESPONDENTS). (WITHDRAWN).

9663-64-U: R.S.C. BOTHWELL ASSOCIATES LIMITED (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30 AND WILLIAM MUNRO AND ERNEST FERGUSON (THE BUILT-UP ROOFERS' DAMP AND WATERPROOFERS' SECTION) (WITHDRAWN).

9664-64-U: A.V. HALLAM LATHING AND PLASTERING LIMITED (APPLICANT) V. LATHERS INTERNATIONAL UNION, LOCAL 97, KENNETH WELLER AND BRUCE WOODS (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
NOVEMBER

9233-64-U: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATIONAL RUBBER COMPANY (RESPONDENT).

9426-64-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA, REGION 75, ON BEHALF OF (JUNE LASENBY) (COMPLAINANT) V. SENTRY DEPARTMENT STORES LTD. (RESPONDENT).

9474-64-U: ROBERT STEWART (COMPLAINANT) V. B.F. GOODRICH CHEMICAL CANADA (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"SINCE THIS COMPLAINT DOES NOT DISCLOSE ON ITS FACE THAT THE COMPLAINANT HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST FOR A REASON FORBIDDEN BY SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 65, THIS COMPLAINT MUST BE DISMISSED FOR THE REASONS GIVEN IN THE TORONTO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, AUGUST, 1964, PAGE 236, AND PURSUANT TO SECTION 45 OF THE BOARD'S RULES OF PROCEDURE."

9475-64-U: ROBERT STEWART (COMPLAINANT) V. B.F. GOODRICH CHEMICAL, CANADA (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"SINCE THIS COMPLAINT DOES NOT DISCLOSE ON ITS FACE THAT THE COMPLAINANT HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST FOR A REASON FORBIDDEN BY SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 65, THIS COMPLAINT MUST BE DISMISSED FOR REASONS GIVEN IN THE TORONTO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, AUGUST, 1964, PAGE 236, AND PURSUANT TO SECTION 45 OF THE BOARD'S RULES OF PROCEDURE."

9511-64-U: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. BOESE FOODS LTD. (RESPONDENT).

9524-64-U: DISTRICT 50, U.M.W.A., REGION 75 (COMPLAINANT) V. SENTRY DEPARTMENT STORES LTD. (RESPONDENT).

9527-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 183 A.F. OF L - C.I.O., C.L.C. (COMPLAINANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

9541-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. REINFORCING STEEL DIVISION OF KELSTEEL LIMITED (RESPONDENT).

9548-64-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. TRANS-CANADA BUILDING PRODUCTS LIMITED (RESPONDENT).

9552-64-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (COMPLAINANT) V. KAYSON PLASTIC & CHEMICALS LIMITED (RESPONDENT).

9555-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. JOANISSE LIMITED (RESPONDENT).

9561-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (COMPLAINANT)

V. TEESWATER CREAMERY LIMITED (RESPONDENT).

9667-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT).

9572-64-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (COMPLAINANT) V. PARMENTER & BULLOCH, DIVISION OF TEXTRON CANADA LIMITED (RESPONDENT).

9613-64-U: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. POWER SUPER MARKETS LIMITED (RESPONDENT).

9692-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. WEBSTER AIR EQUIPMENT LIMITED (RESPONDENT).

APPLICATION FOR DETERMINATION UNDER SECTION 34(5) DISPOSED OF DURING NOVEMBER

8996-64-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION NO. 1669 (APPLICANT) V. FUJI BUILDERS LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 34(5) OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (WHICH HAS APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A BOARD OF ARBITRATION) AND THE RESPONDENT FUJI BUILDERS LTD.

ON JULY 19TH, 1957 AN AGREEMENT WAS ENTERED INTO BETWEEN THE APPLICANT TRADE UNION AND "FUJI BUILDERS" DESCRIBED THEREIN AS "THE CONTRACTOR". THE AGREEMENT WAS EXECUTED "ON BEHALF OF THE CONTRACTOR" BY R. MURATA AND Y. TANAKE WHO SIGNED THEIR NAMES UNDER THE STAMP OF "FUJI BUILDERS & CONTRACTORS". THE COLLECTIVE AGREEMENT WAS A "SHORT FORM" AGREEMENT WHICH INCORPORATED BY REFERENCE THE TERMS AND CONDITIONS OF A THEN-SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT TRADE UNION AND "THE KENORA CONTRACTORS". THE EMPLOYER PARTY TO THE SHORT FORM AGREEMENT OF JULY 19TH, 1957 WHETHER KNOWN AS "FUJI BUILDERS" OR MORE PROPERLY AS "FUJI BUILDERS & CONTRACTORS" WAS IN FACT A PARTNERSHIP WHOSE MEMBERS WERE R. MURATA, Y. ABE, Y. TANAKE AND S. SHIMOJI. THIS PARTNERSHIP WAS, THE BOARD FINDS, BOUND BY THE COLLECTIVE AGREEMENT DESCRIBED ABOVE.

THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT TRADE UNION AND "FUJI BUILDERS" INCORPORATED BY REFERENCE THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND "THE KENORA CONTRACTORS". THIS "MASTER AGREEMENT" IS NO LONGER IN EFFECT NOR HAS IT BEEN RENEGOTIATED. IN FACT, MOST OF THOSE CONTRACTORS WHO WERE PARTIES TO THAT AGREEMENT ARE NOW BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT TRADE UNION AND THE KENORA-RAINY RIVER CONTRACTORS ASSOCIATION.

THE RESPONDENT COMPANY WAS INCORPORATED AS A MANITOBA COMPANY ON JUNE 20TH, 1961 AND ON OCTOBER 31ST, 1961 IT PURCHASED ALL THE ASSETS OF THE



PARTNERSHIP FUJI BUILDERS & CONTRACTORS. THE SHAREHOLDERS OF THE RESPONDENT COMPANY WERE THE MEMBERS OF THE FORMER PARTNERSHIP. THE PARTNERSHIP WHICH WAS A PARTY TO THE COLLECTIVE AGREEMENT DATED JULY 19TH, 1957 NO LONGER EXISTS. THE RESPONDENT COMPANY WAS NEVER A PARTY TO THAT COLLECTIVE AGREEMENT.

EVEN ASSUMING, WITHOUT DECIDING, THAT THE RESPONDENT FUJI BUILDERS LTD. IS THE SUCCESSOR TO THE PARTNERSHIP, FUJI BUILDERS & CONTRACTORS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, THE EFFECT WOULD MERELY BE THAT BARGAINING RIGHTS WOULD CONTINUE. THERE WOULD BE NO CONTINUATION OF THE COLLECTIVE AGREEMENT.

FOR THE REASONS DESCRIBED IN PARAGRAPHS 4 AND 5 ABOVE, THE BOARD FINDS THAT THERE IS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT TRADE UNION AND THE RESPONDENT FUJI BUILDERS LTD."

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT  
DISPOSED OF DURING NOVEMBER

9398-64-M: THE MUTUEL EMPLOYEES ASSOCIATION LOCAL 528, BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, ON THE ONE HAND, AND THE JOCKEY CLUB LIMITED, THE ASCOT TURF CLUB, LIMITED, THE BELLEVILLE DRIVING AND ATHLETIC ASSOCIATION LIMITED, THE CHATHAM DRIVING PARK COMPANY, LIMITED, THE DUFFERIN PARK DRIVING CLUB LIMITED, ESSEX RACING AND ATHLETIC CLUB LIMITED, THE FORT ERIE JOCKEY CLUB LIMITED, THE HAMILTON JOCKEY CLUB (LIMITED), KENILWORTH JOCKEY CLUB, LIMITED, LONG BRANCH JOCKEY CLUB, LIMITED, THE METROPOLITAN RACING ASSOCIATION OF CANADA (LIMITED), THE NAPANEE DRIVING PARK ASSOCIATION LIMITED, ORPENDALE LIMITED, THE PETERBOROUGH TURF CLUB LIMITED, THE SIMCOE DRIVING PARK ASSOCIATION LIMITED, THE SUDBURY RIDING AND DRIVING PARK ASSOCIATION, LIMITED, THE THORNCIFFE PARK RACING AND BREEDING ASSOCIATION, LIMITED, THE TORONTO DRIVING CLUB LIMITED, AND THE WINDSOR RACING AND ATHLETIC CLUB, LIMITED, ON THE OTHER HAND.

THE PARTIES HAVING JOINTLY APPLIED FOR AN EARLY TERMINATION OF THE COLLECTIVE AGREEMENTS BETWEEN THEM PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT, THE BOARD CONSENTED TO THE EARLY TERMINATION BY THE PARTIES OF THE COLLECTIVE AGREEMENTS DATED THE 15TH DAY OF JUNE, 1964, TERMINATION TO BE EFFECTIVE ON THE 15TH DAY OF DECEMBER, 1964.

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING  
NOVEMBER

7640-64-M: TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL 319 (APPLICANT) V. ROTHMANS OF PALL MALL CANADA LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 381 ).

8607-64-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMINION STEEL AND COAL CORPORATION LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WE FIND THAT H.V. CUMMINGS, R.G. JACKSON, W.D. FAIRTHORNE, GEORGE A. MACRAE, NORMAN HUGH OLSEN, THOMAS GEORGE KELLY AND WILLIAM HARRIS EXERCISE MANAGEMENT



FUNCTIONS AND ARE NOT EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. WE FURTHER FIND THAT FRANK REED HORTOP DOES NOT EXERCISE MANAGEMENT FUNCTIONS AND THAT HE IS AN EMPLOYEE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT."

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"I DISSENT FROM THE DECISION OF MY COLLEAGUES WITH REGARD TO H.V. CUMMINGS, R.G. JACKSON, W. D. FAIRTHORNE, G.A. MACRAE, N.H. OLSEN AND T.G. KELLY, ASSISTANT MANAGERS. THESE DISPUTED EMPLOYEES HAVE BEEN IN THE BARGAINING UNIT PREVIOUSLY, AND WHILE THE COMPANY HAS GIVEN THEM A CHANGE OF TITLE AND A NEW JOB DESCRIPTION, VERY LITTLE IF ANY OF THE MANAGERIAL AUTHORITY OUTLINED IN THE JOB DESCRIPTION HAS BEEN EXERCISED. THIS IS AN OFFICE UNIT; THE STANDARDS SET BY THE BOARD FOR MEASURING MANAGERIAL AUTHORITY IN A PRODUCTION UNIT MUST BE CHANGED CONSIDERABLY IF THEY ARE TO HAVE ANY MEANING IN AN OFFICE UNIT. ALL OFFICE EMPLOYEES ARE LIKELY TO HAVE A CERTAIN AMOUNT OF CONFIDENTIAL INFORMATION. MANY OF THEM WILL DEAL WITH WRITTEN REPORTS THAT WILL HAVE AN EFFECT ON THE EMPLOYMENT STATUS OF OTHER EMPLOYEES OF THE COMPANY. THIS ALONE CANNOT DISQUALIFY THEM FROM MEMBERSHIP IN A UNION OR REMOVE THEM FROM THE JURISDICTION OF THE LABOUR RELATIONS ACT. I FIND THESE ASSISTANT MANAGERS, ASSUMING THEY EXERCISE THE AUTHORITY THAT MANAGEMENT SAYS IT HAS GIVEN THEM, MAY BE INTERPRETING CERTAIN MANAGEMENT DECISIONS, BUT ARE NOT MAKING PERSONAL VALUE JUDGEMENTS IN MATTERS AFFECTING LABOUR RELATIONS. FOR THOSE REASONS I WOULD HAVE FOUND THEY WERE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT."

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

9134-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES OF THE RESPONDENT AT WESTON, ON AUGUST 13, 1964 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

PURSUANT TO THE BOARD'S APPOINTMENT DATED AUGUST 18, 1964, THE BOARD'S EXAMINER MET AND CONFERRED WITH THE PARTIES ON AUGUST 21, 1964, AND AT THAT TIME THE RESPONDENT'S REPLY TO THIS APPLICATION WAS DELIVERED TO THE BOARD'S EXAMINER BY THE RESPONDENT.

THE PRE-HEARING VOTE MEETING REPORT PREPARED BY THE BOARD'S EXAMINER ON AUGUST 21, 1964, DESCRIBES THE UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION AS ITEM #5 OF THE REPORT, THE UNIT PROPOSED BY THE RESPONDENT IN ITS REPLY (WHICH IN REALITY WAS IN THE FORM OF AN OBJECTION TO THE APPLICANT'S UNIT) IS DESCRIBED AS ITEM #6 OF THE REPORT, AND FINALLY IN ITEM #9 OF THE REPORT, THE FOLLOWING STATEMENT APPEARS "PARTIES AGREED THAT THE DESCRIPTION OF THE PROPOSED BARGAINING UNIT SHOULD BE - ALL PERSONS EMPLOYED ON THE MAINTENANCE STAFF AT THE HUMBER MEMORIAL HOSPITAL IN WESTON SAVE AND EXCEPT THE CHIEF ENGINEER AND THOSE ABOVE THE RANK OF CHIEF ENGINEER".

THE FINAL PARAGRAPH OF THE EXAMINER'S REPORT STATES THAT THE REPORT

WAS READ BY HIM TO THE REPRESENTATIVES OF THE PARTIES AND NO OBJECTION WAS TAKEN TO ITS CONTENTS.

SUBSEQUENTLY ON AUGUST 26, 1964, THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN A VOTING CONSTITUENCY IN ACCORDANCE WITH THE BARGAINING UNIT WHICH THE EXAMINER'S REPORT INDICATES AS HAVING BEEN AGREED TO BY THE PARTIES AT THE PRE-HEARING VOTE MEETING. THE BOARD DID NOT DIRECT THAT THE BALLOT BOX BE SEALED NOR DID IT DIRECT OR INDICATE THAT ANY FURTHER HEARING OR INQUIRY WOULD BE HELD WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT.

NO OBJECTION OR REQUEST FOR RECONSIDERATION WAS MADE BY EITHER PARTY WITH RESPECT TO THE BOARD'S DECISION DATED AUGUST 26, 1964 IN THIS MATTER.

A PRE-HEARING REPRESENTATION VOTE WAS CONDUCTED BY THE BOARD ON SEPTEMBER 4, 1964. THE CERTIFICATE OF CONDUCT OF ELECTION WAS SIGNED BY BOTH PARTIES AT THAT TIME. NO OBJECTION WAS TAKEN BY EITHER PARTY TO THE TAKING OF THE PRE-HEARING VOTE OR TO THE COUNTING OF THE BALLOTS.

"THE NOTICE OF REPORT OF RETURNING OFFICER WHERE PRE-HEARING VOTE HAS BEEN HELD" (FORM 50) WAS DELIVERED TO THE PARTIES ON SEPTEMBER 4, 1964. ITEM #2 OF FORM 50 READS AS FOLLOWS: "TAKE NOTICE THAT UNLESS A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS, EITHER IN CONNECTION WITH THE APPLICATION OR THE REPRESENTATION VOTE, IS SENT TO THE BOARD BY ONE OF THE PARTIES OR BY AN EMPLOYEE SO THAT IT IS RECEIVED BY THE BOARD OR, IF IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 8 YORK STREET, TORONTO 1, ONTARIO, IT IS MAILED, NOT LATER THAN THE 11TH DAY OF SEPTEMBER, 1964, THE REPORT SHALL CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE AND THE MATTERS CONTAINED THEREIN INCLUDING THE ELIGIBILITY OF ANY PERSON WHOSE ELIGIBILITY TO VOTE HAS BEEN CHALLENGED BY A PARTY OR IS IN DOUBT AND THE BOARD MAY DISPOSE OF THE APPLICATION BEFORE IT WITHOUT FURTHER NOTICE TO ANY PARTY OR TO THE EMPLOYEES."

NO STATEMENT OF OBJECTION AND DESIRE TO MAKE REPRESENTATIONS EITHER IN CONNECTION WITH THE APPLICATION OR THE REPRESENTATION VOTE WAS RECEIVED BY THE BOARD WITHIN THE TIME FIXED BY ITEM #2 OF FORM 50 IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 2 OF SECTION 44 OF THE BOARD'S RULES OF PROCEDURE.

ON SEPTEMBER 14, 1964, THE BOARD ISSUED ITS DECISION WHEREIN IT FOUND THAT ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT. THE BOARD ACCORDINGLY DIRECTED THAT A CERTIFICATE ISSUE TO THE APPLICANT IN THE TERMS OF THE BARGAINING UNIT REPORTED BY THE EXAMINER TO HAVE BEEN AGREED TO BY THE PARTIES AT THE PRE-HEARING VOTE MEETING.

SUBSEQUENTLY, ON SEPTEMBER 16, 1964, THE RESPONDENT OBJECTED TO THE APPLICANT BEING CERTIFIED AS BARGAINING AGENT FOR THE UNIT DESCRIBED IN THE BOARD'S CERTIFICATE.

EVEN IF THE BOARD HAD ERRED IN ITS DETERMINATION WITH RESPECT TO THE

APPROPRIATENESS OF THE BARGAINING UNIT DESCRIBED IN ITS DECISION DATED SEPTEMBER 14, 1964, AND WHILE THE RESPONDENT MAY NOT HAVE AGREED TO WAIVE ITS OBJECTIONS TO THE BARGAINING UNIT PROPOSED BY THE APPLICANT WHEN IT AGREED TO A DESCRIPTION OF A BARGAINING UNIT AS SET FORTH IN ITEM #9 OF THE EXAMINER'S REPORT, THE RESPONDENT WAS OR SHOULD HAVE BEEN AWARE THAT THE BOARD BY ITS DECISION OF AUGUST 26, 1964, WAS NOT TAKING INTO CONSIDERATION THE OBJECTIONS TO THE BARGAINING UNIT AS CONTAINED IN THE RESPONDENT'S REPLY AND THE RESPONDENT COULD HAVE AT THAT TIME REGISTERED ITS OBJECTION TO THE BOARD'S DECISION. AGAIN THE RESPONDENT HAD AN OPPORTUNITY ON SEPTEMBER 4, 1964, TO OBJECT TO THE VOTE BEING TAKEN AT THAT TIME OR TO REQUEST THAT THE BALLOT BOX BE SEALED UNTIL THE BOARD HAD CONSIDERED ITS OBJECTIONS TO THE DESCRIPTION OF THE BARGAINING UNIT. THE RESPONDENT HAD A FURTHER OPPORTUNITY AT ANY TIME PRIOR TO SEPTEMBER 11, TO FILE WHATEVER OBJECTIONS IT HAD TO THE APPLICATION OR TO THE VOTE AS SPECIFICALLY DIRECTED BY FORM 50 REFERRED TO ABOVE. IT SHOULD HAVE BEEN ABUNDANTLY CLEAR TO THE RESPONDENT THAT THE BOARD IN TAKING THE STEPS WHICH WERE TAKEN IN PROCESSING THIS APPLICATION AFTER THE RESPONDENT'S REPLY WAS FILED WAS TREATING THE AGREEMENT AS CONTAINED IN ITEM #9 OF THE BOARD'S PRE-HEARING VOTE MEETING REPORT AS SUPERCEDING THE PROPOSALS CONTAINED IN THE RESPONDENT'S REPLY.

SINCE THE RESPONDENT CAUSED THE BOARD BY ITS AGREEMENT AS CONTAINED IN ITEM #9 TO IGNORE THE STATEMENTS CONTAINED IN ITS REPLY, AND HAVING ALLOWED THE VOTE TO BE TAKEN WITHOUT OBJECTION WITHIN THE TIME PRESCRIBED IN ACCORDANCE WITH SUBSECTION 2 OF SECTION 44 OF THE BOARD'S RULES, THE RESPONDENT MUST BE CONSIDERED TO BE THE AUTHOR OF ITS OWN MISFORTUNE. THE BOARD IS THEREFORE OF OPINION THAT THE RESPONDENT IS PRECLUDED FROM OBJECTING TO THE BARGAINING UNIT AT THIS STAGE OF THE PROCEEDINGS.

THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED SEPTEMBER 14, 1964 IN THIS MATTER."

INDEXED ENDORSEMENTS - CERTIFICATION

8799-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EMANUEL PRODUCTS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"A MASS OF EVIDENCE EXTENDING OVER SOME 7 DAYS OF HEARINGS WAS PRESENTED TO THE BOARD BY THE PARTIES CONCERNING THE CIRCUMSTANCES OF THE ORIGINATION, CIRCULATION AND MANNER IN WHICH SIGNATURES WERE OBTAINED TO DOCUMENTS FILED AS PETITIONS BY THE OBJECTING EMPLOYEES IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT. IT IS MANIFEST THAT THERE IS A SHARP CONFLICT OF TESTIMONY BETWEEN THE WITNESSES ON MATTERS OF VITAL CONSEQUENCE TO OUR CONSIDERATION OF WHETHER THE DOCUMENTS CAN BE RELIED UPON AS RECORDING THE TRUE WISHES OF THE SIGNATORIES. IN ESTIMATING THE WORTH AND RELIABILITY OF THEIR TESTIMONY, WE HAVE CAREFULLY STUDIED AND COMPARED THE RELATIVE PROBABILITIES AND IMPROBABILITIES OF THE DIFFERENT ACCOUNTS GIVEN BY THEM OF THE INCIDENTS IN QUESTION, TOGETHER WITH OUR IMPRESSION OF THE DEMEANOUR OF AND MANNER IN WHICH EACH OF THE WITNESSES GAVE HIS EVIDENCE IN THE WITNESS BOX.



IN ALL THE CIRCUMSTANCES, WE ARE CONSTRAINED TO BELIEVE THAT THE EVIDENCE INDICATING A PARTICIPATION ON THE PART OF SOME MANAGERIAL PERSONNEL IN THE CIRCULATION AND COLLECTION OF SIGNATURES TO THE PETITIONS DESERVES HIGHER CREDIBILITY THAN THAT OF THE TESTIMONY OF THE WITNESSES WHO DENY THIS PARTICIPATION.

IN THE RESULT, THE CONCLUSION IS INESCAPABLE THAT SOME MEMBERS OF MANAGEMENT SO CONDUCTED AND OBTRUDED THEMSELVES INTO THE AFFAIRS OF THEIR EMPLOYEES AS TO MAKE IT REASONABLE AND PROBABLE FOR THE EMPLOYEES TO BELIEVE THAT MANAGEMENT HAD THEM UNDER SURVEILLANCE AND EXPECTED AND WANTED THEM TO SIGN THE PETITIONS. IN ALL THE CIRCUMSTANCES, WE ARE UNABLE TO ACCEPT THE PETITIONS AS RELIABLE EVIDENCE OF THE TRUE AND UNINHIBITED WISHES OF THE EMPLOYEES."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT.

MY ASSESSMENT OF THE EVIDENCE IN THIS CASE AND THE CREDIBILITY OF EACH OF THE 19 WITNESSES WHO TESTIFIED LEAVES NO DOUBT IN MY MIND THAT NO MEMBER OF MANAGEMENT ASSISTED OR ENCOURAGED, EITHER DIRECTLY OR INDIRECTLY, THE PREPARATION OR CIRCULATION OF THE PETITION HEREIN. ACCORDINGLY I FIND THAT THE PETITION RECORDS AND EXPRESSES THE VOLUNTARY AND UNINHIBITED WISHES OF ITS SIGNATORIES IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT AND I WOULD DIRECT A REPRESENTATION VOTE BE TAKEN."

9578-64-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E. I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. SUNNYSIDE HOME FOR THE AGED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT IS A "JOINT HOME" FOR THE AGED ESTABLISHED AND MAINTAINED UNDER AN AGREEMENT ENTERED INTO BY THE CORPORATION OF THE CITY OF KITCHENER, THE CORPORATION OF THE CITY OF WATERLOO, THE CORPORATION OF THE CITY OF GALT AND THE CORPORATION OF THE COUNTY OF WATERLOO, PURSUANT TO THE PROVISIONS OF THE HOMES FOR THE AGED ACT, R.S.O. 1960, CHAPTER 174. THE AGREEMENT ESTABLISHING SUNNYSIDE HOME FOR THE AGED VESTS IN THE "COMMITTEE OF MANAGEMENT" OF THE RESPONDENT "THE FULL MANAGEMENT, REGULATION AND CONTROL OF THE SAID HOME, ITS LANDS AND OTHER BUILDINGS". THE "COMMITTEE OF MANAGEMENT" IS ALSO EMPOWERED PURSUANT TO THE AGREEMENT TO DISPOSE OF SUCH LANDS AND BUILDINGS WHICH ARE NOT REQUIRED TO BE USED IN CONNECTION WITH THE OPERATION OF THE SAID HOME. THE AGREEMENT FURTHER PROVIDES THAT ANY DISPUTE WHICH ARISES BETWEEN THE PARTIES TO THE AGREEMENT AND THE "COMMITTEE OF MANAGEMENT" CONCERNING MATTERS PERTAINING TO THE BUDGET OF THE HOME OR THE EXPENDITURES OF LARGE SUMS OF MONEY NOT INCLUDED IN THE BUDGET MUST BE RESOLVED BY ARBITRATION.

IT THEREFORE APPEARS FROM THE TERMS OF THE AGREEMENT THAT THE "COMMITTEE OF MANAGEMENT" OF THE RESPONDENT IS ENTRUSTED WITH A LARGE DEGREE OF RESPONSIBILITY AND INDEPENDENCE IN THE OPERATION OF THE HOME AND THE BOARD THEREFORE FINDS THAT FOR THE PURPOSES OF THE LABOUR



RELATIONS ACT, SUNNYSIDE HOME FOR THE AGED, ACTING THROUGH ITS "COMMITTEE OF MANAGEMENT", IS THE EMPLOYER OF THE PERSONS INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED.

ACCORDINGLY THE BOARD FURTHER FINDS THAT A BY-LAW ENACTED BY THE CORPORATION OF THE COUNTY OF WATERLOO INVOKING THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT WITH RESPECT TO ITS EMPLOYEES IS NOT A BY-LAW AFFECTING THE EMPLOYEES OF THE SUNNYSIDE HOME FOR THE AGED. SINCE THE CORPORATION OF THE CITY OF KITCHENER, THE CORPORATION OF THE CITY OF GALT, AND THE CORPORATION OF THE CITY OF WATERLOO HAVE NOT DECLARED THAT THE LABOUR RELATIONS ACT DOES NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM, A DECLARATION BY THE CORPORATION OF THE COUNTY OF WATERLOO UNDER SECTION 89 OF THE ACT WOULD NOT BE SUFFICIENT IN THE CIRCUMSTANCES OF THIS CASE TO DEPRIVE THE BOARD OF JURISDICTION IN THIS MATTER, EVEN IF THE BOARD WERE TO FIND THAT THE FOUR MUNICIPAL CORPORATIONS WERE THE JOINT EMPLOYER OF THE PERSONS INCLUDED IN THE BARGAINING UNIT."

9597-64-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. PIONEER ELECTRIC EASTERN LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT REQUESTED THE BOARD TO APPOINT AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE DRAFTING SUPERVISOR, WHO, THE RESPONDENT SUGGESTED, SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. IT WAS STATED ON BEHALF OF THE RESPONDENT THAT THIS POSITION HAD BEEN CREATED AND FILLED AFTER THE DATE OF THE MAKING OF THIS APPLICATION.

THE BOARD IS OF THE OPINION THAT ON AN APPLICATION FOR CERTIFICATION IT IS THE SITUATION WHICH EXISTED AT THE TIME THE APPLICATION WAS MADE WHICH IS TO BE CONSIDERED. IT IS WITH REFERENCE TO THAT TIME THAT THE EVIDENCE OF MEMBERSHIP IN A TRADE UNION IS, UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, TO BE CONSIDERED, AND IN OUR OPINION SUCH EVIDENCE CAN ONLY PROPERLY BE CONSIDERED IN RELATION TO THE EMPLOYMENT FORCE AND LINE OF SUPERVISION EXISTING AT THE SAME TIME.

THE RESPONDENT'S REQUEST THAT AN EXAMINER BE APPOINTED IS THEREFORE DENIED."

#### INDEXED ENDORSEMENT - TERMINATION

9596-64-R: MR. B.G. McGUIN 684 LINCOLN ROAD, WINDSOR, ONTARIO (APPLICANT) V. LOCAL 944, INTERNATIONAL UNION OF OPERATING ENGINEERS, 83 RIVERSIDE DRIVE, WEST, WINDSOR, ONTARIO (RESPONDENT). (DISMISSED).

(RE: PRODUCTION PAINTING,  
WINDSOR, ONTARIO).

ON NOVEMBER 13, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT APPLIED ON OCTOBER 29, 1964, PURSUANT TO THE

PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF PRODUCTION PAINTING REPRESENTED BY THE RESPONDENT.

THE INTERNATIONAL UNION OF OPERATING ENGINEERS WAS CERTIFIED AS BARGAINING AGENT FOR ALL THE EMPLOYEES OF MOGENS HANSEN, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF PRODUCTION PAINTING AT WINDSOR, ON JUNE 12, 1963.

CONCILIATION SERVICES WERE MADE AVAILABLE TO INTERNATIONAL UNION OF OPERATING ENGINEERS AND MOGENS HANSEN, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF PRODUCTION PAINTING ON SEPTEMBER 30, 1964.

SECTION 46 (1) (A) AND (B) OF THE ACT PROVIDE THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE THE TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND WHERE A CONCILIATION OFFICER OR MEDIATOR HAS BEEN APPOINTED UNLESS: (A) 30 DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES, OR (B) 30 DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT A 30 DAY PERIOD AS REFERRED TO IN PARAGRAPH 4 ABOVE COULD NOT HAVE ELAPSED PRIOR TO THE DATE THAT THIS APPLICATION WAS MADE.

IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46 (1) (A) OR (B) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD IN WRITING ON OR BEFORE NOVEMBER 23RD, 1964, WHETHER, IN HIS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR, HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.

THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT."

ON NOVEMBER 30, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN ITS DECISION OF NOVEMBER 13, 1964, IN THIS MATTER THE BOARD DIRECTED THE APPLICANT TO ADVISE IT IN WRITING WHETHER, IN HIS OPINION, THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE WERE AS SET OUT IN THAT DECISION. THE APPLICANT HAS FAILED TO ADVISE THE BOARD OF ANY ERROR. THE BOARD THEREFORE FINDS THAT:

(I) THE INTERNATIONAL UNION OF OPERATING ENGINEERS WAS CERTIFIED AS BARGAINING AGENT FOR ALL THE EMPLOYEES OF MOGENS HANSEN CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF PRODUCTION PAINTING AT WINDSOR, ON JUNE 12, 1963.

(II) CONCILIATION SERVICES WERE MADE AVAILABLE TO INTERNATIONAL UNION OF OPERATING ENGINEERS AND MOGENS HANSEN, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF PRODUCTION PAINTING ON SEPTEMBER 30, 1964.

(III) AT THE TIME THE INSTANT APPLICATION WAS MADE, 30 DAYS HAD NOT ELAPSED AFTER THE REPORT OF A CONCILIATION BOARD HAD BEEN RELEASED BY THE MINISTER TO THE PARTIES OR AFTER THE MINISTER HAD INFORMED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

SINCE THE INSTANT APPLICATION WAS MADE ON OCTOBER 29, 1964, THIS APPLICATION IS UNTIMELY IN VIEW OF THE PROVISIONS OF SECTION 46 OF THE LABOUR RELATIONS ACT. THE APPLICATION MUST THEREFORE BE DISMISSED, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE."

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING NOVEMBER

7640-63-M: TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL 319 (APPLICANT) V. ROTHMANS OF PALL MALL CANADA LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IT IS PLAIN THAT PATRICK RICHARDSON PERFORMS DUTIES OF A GREATER RESPONSIBILITY THAN THE TWO EMPLOYEES WHO WORK WITH HIM IN THE STORES PORTION OF THE MAINTENANCE DEPARTMENT. WE ARE NOT PERSUADED, HOWEVER, ON OUR ANALYSIS OF THE EVIDENCE, THAT HE EXERCISES OR POSSESSES ANY APPRECIABLE DEGREE OF SUPERVISORY AUTHORITY OR THAT IN PERFORMING HIS DUTIES HE IS REQUIRED TO OR THAT HE DOES INITIATE, OR EFFECTUATE ANY INDEPENDENT DECISIONS OR POLICIES AFFECTING THE DEPARTMENT OR THE STORES PORTION THEREOF, OR THAT HE GIVES DIRECTION OR ALLOTS WORK TO THE TWO OTHER EMPLOYEES, SAVE ONLY IN VERY ROUTINE AND CLOSELY CONTROLLED AREAS PREDETERMINED AND FORMULATED BY MANAGEMENT. MOREOVER, ON THE BASIS OF OUR INTERPRETATION OF THE EVIDENCE, AND PARTICULARLY THAT OF PATRICK RICHARDSON HIMSELF, WE ARE AT A LOSS TO FIND, AS WE WERE INVITED TO DO, THAT HIS STATUS WITH THE COMPANY IS ON THE SAME LEVEL OF RESPONSIBILITY IN HIS AREA OR IS EQUAL TO THAT OF R. WALMSLEY, THE PURCHASING AGENT, OR G. MURPHY, THE MAINTENANCE SUPERINTENDENT, WHO ARE ADMITTEDLY ENGAGED IN MANAGERIAL WORK.

NO DOUBT, OF COURSE, HIS EMPLOYMENT RELATIONSHIP WITH THE COMPANY DOES ENCOMPASS CERTAIN ELEMENTS (E.G. HE DOES EXERCISE SOME DIRECTION OVER AND ALLOTS CERTAIN WORK TO THE OTHER TWO EMPLOYEES; HE HAS A GREATER RESPONSIBILITY THAN THESE TWO EMPLOYEES; HE HAS BEEN INVITED TO MAKE SUGGESTIONS TO MANAGEMENT CONCERNING THE ROUTINE OF THE DAY-TO-DAY OPERATION AND INVENTORY OF THE STORES PORTION OF THE MAINTENANCE DEPARTMENT.



MENT; HE IS REQUIRED TO AND DOES EXERCISE SOME INDEPENDENT JUDGMENT ALBEIT IN VERY ROUTINE, CLOSELY CONTROLLED AND PREDETERMINED MATTERS; HE IS PAID A SALARY RATHER THAN BEING HOURLY RATED; HE DOES NOT SUSTAIN ANY DEDUCTIONS FROM HIS PAY FOR SHORT PERIODS OF ABSENCE DUE TO ILLNESS; AND HE DOES NOT PUNCH A TIME CLOCK) WHICH, AT LEAST WHEN THEY HAVE BEEN COMPLEMENTED WITH OTHER FACTORS, HAVE OFTEN BEEN CONSIDERED AS FORMING SOME PART OF THE INDICIA OF A MANAGEMENT FUNCTION, WE ARE NOT SATISFIED THAT THESE ELEMENTS STANDING ALONE, OR WHEN TAKEN WITH HIS DUTIES AND POSITION AS A WHOLE, ARE, IN THE CIRCUMSTANCES, OF SUFFICIENT PROPORTION, OR OF SUCH CHARACTER OR QUALITY AS TO PLACE PATRICK RICHARDSON IN THE CATEGORY OF A PERSON PERFORMING MANAGERIAL FUNCTIONS. THE FACT THAT MANAGEMENT TOOK SOME FORMAL STEPS TO "PROMOTE" RICHARDSON TO A "STAFF POSITION" AND THEREBY, APPARENTLY, TO CONFER UPON HIM A MANAGEMENT TITLE, CANNOT IN THE ABSENCE OF GIVING HIM THE FACTUAL ATTRIBUTES OF SUCH A POSITION, HAVE THE EFFECT OF ELEVATING HIM TO THE RANKS OF MANAGEMENT FOR PURPOSES OF THE LABOUR RELATIONS ACT. IN SUBSTANCE RICHARDSON'S DUTIES AND RESPONSIBILITIES AFTER HIS "PROMOTION" REMAINED MUCH THE SAME AS THEY HAD EXISTED BEFORE.

IN THE RESULT, IT IS OUR OPINION THAT PATRICK RICHARDSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

ON THE EVIDENCE ADDUCED AT THE HEARING, I FIND THAT PATRICK RICHARDSON, AN EMPLOYEE OF THE RESPONDENT, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND, THEREFORE, IS NOT DEEMED TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT."

SPECIAL ENDORSEMENT IN CONCILIATION APPLICATION

8876-64-C: THE BRICKLAYERS', MASONS AND PLASTERERS', INTERNATIONAL UNION OF AMERICA, LOCAL No. 12 (APPLICANT) V. KEM'S MASONRY (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE QUESTION AT ISSUE IN THIS CASE IS WHETHER THE RESPONDENT, KEM'S MASONRY, (HEREINAFTER CALLED "KEM'S") HAS BECOME THE SUCCESSOR TO ABLE CONSTRUCTION (HEREINAFTER CALLED "ABLE") BY REASON OF A SALE OF A PART OF ABLE'S BUSINESS TO KEM'S WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. SECTION 47A(1) PROVIDES:

IN THIS SECTION,

- (A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF:
- (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVING CORRESPONDING MEANINGS.

ABLE IS A PARTNERSHIP CONSISTING OF THREE PERSONS WHO ENGAGE IN THE BRICKLAYING AND MASONRY BUSINESS. THE THREE PERSONS ARE ALL SONS-IN-LAW



OF ONE, CHRISTIAN BETTENDORF. WHILE THE EVIDENCE DOES NOT SUPPORT AN INFERENCE THAT BETTENDORF IS A PARTNER IN THE BUSINESS, IT IS CLEAR THAT HE IS BY NO MEANS DISINTERESTED IN IT. HE HAS BACKED THE PARTNERS' NOTES AT THE BANK; HE MADE HIS BASEMENT AVAILABLE AS AN OFFICE, RENT FREE; THE AFFAIRS OF THE BUSINESS WERE DISCUSSED WITH HIM, A FORMER BRICKLAYER. FROM TIME TO TIME IN GIVING EVIDENCE ABOUT THE BUSINESS HE USED THE PHRASE "WE DID THIS" - "WE DID THAT".

ABLE HAS A COLLECTIVE BARGAINING RELATIONSHIP WITH THE APPLICANT TRADE UNION. FOR SOME TIME PRIOR TO SEPTEMBER, 1963, ABLE HAD EMPLOYED NON-UNION MEN WHEN OPERATING IN THE KITCHENER - WATERLOO AREA. ON SEPTEMBER 26, 1963, THIS BOARD HELD THAT THE APPLICANT AND ABLE WERE BOUND BY A COLLECTIVE AGREEMENT. NOTWITHSTANDING THIS DECISION, THE APPLICANT UNION PERMITTED ABLE TO COMPLETE ITS OUTSTANDING JOBS WITHOUT EMPLOYING UNION MEN AND PAYING UNION RATES IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT. SOME NEGOTIATIONS TOWARDS A NEW AGREEMENT TOOK PLACE, BUT THESE APPARENTLY BROKE DOWN. ACCORDINGLY, ON FEBRUARY 29, 1964, THE UNION, BY LETTER, ADVISED ABLE THAT ALL PAST CONSIDERATIONS WERE WITHDRAWN AND THAT ALL VIOLATIONS OF THE EXISTING AGREEMENT WOULD BE DEALT WITH IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT BETWEEN THE PARTIES.

ABLE'S BUSINESS IN THE KITCHENER-WATERLOO AREA HAS DECLINED IN 1964. SINCE MARCH 9TH IT HAS BUILT NO APARTMENTS. IN JULY IT HAD JOBS ON A FEW HOUSES AND A FACTORY ADDITION. THE REASON FOR ITS BUSINESS DECLINE, ACCORDING TO KUEHN, ONE OF THE PARTNERS, AND TO BETTENDORF, WAS IT COULD NOT COMPETE WITH NON-UNION CONTRACTORS - THAT IS, IT COULD NOT MATCH THEIR BIDS. ON MARCH 9TH IT HAD A HOSPITAL JOB IN FERGUS, BUT THIS WAS A UNION JOB.

KEM'S WAS CONSTITUTED ON MARCH 9TH, 1964. BETTENDORF IS THE ONLY MEMBER OF THE FIRM. ACCORDING TO BETTENDORF AND KUEHN, BETTENDORF HAD CONSIDERED JOINING ABLE AS A PARTNER, BUT IT WAS FELT THIS WOULD NOT WORK OUT SINCE THERE HAD BEEN SOME DISAGREEMENT BETWEEN THE THREE SONS-IN-LAW AND BETTENDORF REGARDING THE RUNNING OF THE BUSINESS. ACCORDING TO BETTENDORF SET UP HIS OWN FIRM AND COMMENCED OPERATIONS. KEM'S ADDRESS IS THE SAME AS ABLE'S, AND WHILE KEM'S HAS NO TELEPHONE NUMBER, THAT IS, IT DOES NOT PAY FOR A PHONE, ABLE'S NUMBER APPEARS ON KEM'S STATIONERY. FOR A TIME, ABLE AND KEM'S SHARED A PART-TIME GIRL IN ABLE'S OFFICE WITH ABLE PAYING HER SALARY. THE TWO FIRMS HAVE ALSO USED THE SAME PART-TIME ESTIMATOR.

UP UNTIL MAY, 1964, KEM'S BUSINESS WAS VERY SMALL. BUT THEREAFTER IT BLOSSOMED IN COMPARISON TO ABLE'S. THIS IS EXPLAINED BY BETTENDORF AS FOLLOWS: "...THERE WERE NO UNION JOBS TO BE HAD. ABLE TRIED TO TENDER BUT COULD NOT GET A BID ACCEPTED. WE (KEM'S) GOT THE JOBS BECAUSE WE ARE NON-UNION." AS SOON AS KEM'S OPERATIONS EXPANDED, EQUIPMENT WAS REQUIRED, AND ON MAY 7TH KEM'S AND ABLE ENTERED INTO AN AGREEMENT WHEREBY ABLE AGREED TO RENT TO KEM'S CERTAIN OF ITS EQUIPMENT, INCLUDING A FORK LIFT TRUCK, A UTILITY VEHICLE, SCAFFOLDING EQUIPMENT, AND TWO MORTAR MIXERS. CERTAIN OTHER EQUIPMENT SUCH AS MORTAR BOXES, SHOVELS, HOES, ETC., WAS SUPPLIED FREE OF CHARGE IF RETURNED. KEM'S AGREED TO RETURN EQUIPMENT ON FORTY-EIGHT HOURS' NOTICE. THE RATES, INCLUDING DISCOUNTS, ARE SET OUT IN A "MEMORANDUM" DATED MAY 7TH, 1964 (EXHIBIT 2) ABOUT 60% OF ABLE'S EQUIPMENT WAS RENTED TO KEM'S AT THE TIME OF THE

HEARING AND UP TO 65% HAD BEEN RENTED FOR A SHORT TIME. WHILE THERE IS A SUGGESTION BY THE APPLICANT'S BUSINESS REPRESENTATIVE THAT KUEHN HAD TOLD HIM THAT BETTENDORF HAD MONEY IN ABLE AND THE EQUIPMENT WAS BEING RENTED ON THE BASIS OF THE DEBT BEING REDUCED, THIS IS DENIED BOTH BY KUEHN (CALLED BY THE APPLICANT) AND BETTENDORF. FURTHER, BETTENDORF STATED IN EVIDENCE THAT THE FIRST CHEQUE TO ABLE FOR RENT IN THE AMOUNT OF \$435 HAD BEEN HANDED TO ABLE FOUR OR FIVE DAYS AGO. ON THE BASIS OF ALL THE EVIDENCE, WE ARE UNABLE TO FIND BETTENDORF HAD ANY FINANCIAL INTEREST IN ABLE, OTHER THAN AS A BACKER OF LOANS TO ABLE FROM THE BANK.

SOME TIME PRIOR TO THIS RENTAL AGREEMENT, KEM'S ALSO TOOK OVER ONE OF ABLE'S JOBS WHICH HAD BEEN BID ON A NON-UNION BASIS. BETTENDORF STATED IN EVIDENCE THAT THE REASON WAS THAT ABLE FOUND IT COULD NOT CARRY ON AS A UNION SHOP ON THE JOB WITHOUT SUFFERING A LOSS. SO HE (KEM'S) TOOK OVER THE JOB ON A SUB-CONTRACT BASIS WITH THE APPROVAL OF THE GENERAL CONTRACTOR. KEM'S ALSO TOOK OVER FIVE OF ABLE'S EMPLOYEES ON THAT JOB AND RETAINED THEM IN ITS EMPLOY WHEN THE JOB WAS COMPLETED. THE MEN WHO WERE TAKEN OVER WERE NOT MEMBERS OF THE APPLICANT, THOUGH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN ABLE AND THE APPLICANT, THEY SHOULD HAVE BEEN. THE UNION TOOK ISSUE WITH ABLE ON THIS POINT IN A LETTER DATED APRIL 13TH, 1964, AND ABLE REPLIED BY LETTER DATED APRIL 16TH THAT KEM'S WAS DOING THE JOB. IT SEEMS LIKELY THAT THE UNION'S LETTER OF APRIL 13TH RESULTED IN THE SUB-CONTRACT TO KEM'S. IT SHOULD BE NOTED THAT KEM'S EMPLOYS A TOTAL OF SOME 18 OR 19 MEN.

FROM TIME TO TIME, BETTENDORF GETS HIS SONS-IN-LAW TO HELP HIM. FOR EXAMPLE, IF HE REQUIRES A MAN TO BE TRANSFERRED, ONE OF HIS SONS-IN-LAW WILL PICK THE MAN UP IN AN ABLE VEHICLE. WHEN ASKED IF HE HAD PAID ANY OF THE PARTNERS IN ABLE FOR THE TIME SPENT ON KEM'S BUSINESS, BETTENDORF REPLIED, "NOT YET." ASKED, "WILL YOU?" HIS ANSWER WAS SOMEWHAT EVASIVE: "THAT DEPENDS, I HELPED THEM A LOT FOR FIVE YEARS."

ALL THE WITNESSES, KUEHN, DAVIDSON, (THE APPLICANT'S BUSINESS REPRESENTATIVE) AND BETTENDORF AGREED THAT IN THE SMALL BRICKLAYING BUSINESS SUCH AS IS INVOLVED IN THE PRESENT CASE, THERE IS NO GOODWILL TO SELL. THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES. NONE HAD EVER HEARD OF THE SALE OF SUCH A BUSINESS IN THE SENSE OF A SALE AS A GOING CONCERN.

THE APPLICANT CONTENDS THAT HAVING REGARD TO THIS FACT, THERE TOOK PLACE A "LEASE" OR "OTHER DISPOSITION" OF PART OF ABLE'S BUSINESS TO KEM'S WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. IT WAS POINTED OUT THAT IF SUCH A TRANSACTION DOES NOT FALL WITHIN THE SECTIONS, IT WOULD BE AN EASY MATTER TO AVOID THE APPLICATION OF THE SECTION BY SIMPLY SETTING UP PERSONS INTERESTED IN ONE FIRM AS ANOTHER FIRM AND BOTH BIDDING ON A JOB, ONE AS UNION, THE OTHER AS NON-UNION. IF THE NON-UNION FIRM GETS THE JOB, THE UNION FIRM SUPPLIES THE EQUIPMENT, THE "KNOW-HOW" AND PERHAPS THE MEN. RELIANCE IS PLACED ON THE VERY BROAD DEFINITION OF "SALE" IN SECTION 47A(1), PARTICULARLY THE WORDS "AND ANY OTHER MANNER OF DISPOSITION".

THE RESPONDENT ARGUES THERE HAS BEEN NO "LEASE" OF THE BUSINESS OR PART OF ABLE'S BUSINESS TO KEM'S BECAUSE LEASE IMPLIES PARTING WITH EXCLUSIVE POSSESSION FOR A DEFINITE LENGTH OF TIME, AND SINCE THERE

EXISTED A 48-HOUR RECALL PRIVILEGE, THERE WAS NO SURRENDER OF EXCLUSIVE POSSESSION. MOREOVER, RESPONDENT SUBMITS THAT PARTING WITH EQUIPMENT DOES NOT NECESSARILY MEAN PARTING WITH ONE'S BUSINESS, AND IT WAS EMPHASIZED THAT ABLE WAS STILL IN BUSINESS AND ATTEMPTING TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE APPLICANT UNION.

WE AGREE WITH THE APPLICANT THAT IF THE TRANSACTION IN QUESTION DOES NOT FALL WITHIN SECTION 47A, THIS WOULD MEAN THAT IT WOULD BE A COMPARATIVELY SIMPLE MATTER TO AVOID THE APPLICATION OF THE SECTION. THEREFORE, IF ON ONE INTERPRETATION OF THE LANGUAGE OF THE SECTION WE CAN FIND THAT A "SALE" HAS OCCURRED, EVEN THOUGH THE LANGUAGE MAY BE OPEN TO ANOTHER MEANING, WE BELIEVE WE SHOULD ADOPT THE MORE LIBERAL VIEW. WE ARE NOT IMPRESSED WITH THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT THERE HAS NOT BEEN A LEASE WITHIN THE MEANING OF THE SECTION. BUT EVEN IF THIS ARGUMENT IS ACCEPTED, COUNSEL HAD NO ANSWER TO THE ARGUMENT THAT THE TRANSACTION FALLS WITHIN THE BROADER LANGUAGE "OR ANY OTHER MANNER OF DISPOSITION". AND, IF IT IS CONTENDED THAT THESE WORDS MUST BE CONSTRUED EJUSDEM GENERIS WITH THE PRECEDING WORDS, THE TRANSACTION HERE IS SURELY SOMETHING CLOSELY AKIN TO A LEASE.

THUS, WE HAVE NO DIFFICULTY IN FINDING THAT THE TRANSACTION HERE IN QUESTION IS EITHER A "LEASE" OR "OTHER MANNER OF DISPOSITION" WITHIN THE MEANING OF THOSE WORDS IN SECTION 47A(1). THE IMPORTANT QUESTION IS WHETHER WHAT WAS LEASED OR OTHERWISE DISPOSED OF WAS A PART OF ABLE'S "BUSINESS" AS THAT WORD IS USED IN THE SAID SECTION. IT SHOULD BE NOTED THAT THE DEFINITION OF "SELLS" IN 47A(1) INCLUDES "A PART OR PARTS" OF A BUSINESS, AND THUS THE FACT THAT ABLE IS STILL IN BUSINESS DOES NOT NECESSARILY AFFECT THE MATTER, ALTHOUGH WITH UP TO 65% OF ITS EQUIPMENT IN KEM'S HANDS, ABLE IS CERTAINLY NOT ABLE TO CONDUCT ITS BUSINESS ON A SCALE COMPARABLE TO ITS FORMER CAPACITY.

IN SEEKING TO DETERMINE WHETHER THE TRANSACTION HERE INVOLVED A LEASE OR OTHER DISPOSITION OF A PART OF ABLE'S BUSINESS, CERTAIN FACTS EMERGE WHICH ARE OF PECULIAR SIGNIFICANCE FROM AN INDUSTRIAL RELATIONS POINT OF VIEW. FIRSTLY, WE HAVE THE RELATIONSHIP, FAMILY AND OTHERWISE, BETWEEN THE ACTIVE PARTICIPANTS OF KEM'S AND ABLE, A FACT WHICH EVEN COUNSEL FOR THE RESPONDENT CHARACTERIZED AS "A DAMAGING POINT AGAINST HIS CLIENT". SECONDLY, THERE IS THE QUESTION OF THE TIMING OF SOME OF THE EVENTS. THUS FOR EXAMPLE, THE UNION'S LETTER OF FEBRUARY 29TH IN WHICH IT ADVISED ABLE THAT ALL PAST CONSIDERATIONS WERE WITHDRAWN WAS FOLLOWED BY THE SETTING UP OF KEM'S ON MARCH 9TH. AGAIN, THE UNION'S LETTER OF APRIL 1, COMPLAINING OF THE EMPLOYMENT OF NON-UNION MEN BY ABLE ON THE UNIVERSITY AVENUE JOB WAS FOLLOWED ALMOST IMMEDIATELY BY KEM'S TAKING OVER THAT JOB AS WELL AS THE EMPLOYEES OF ABLE ON THE JOB SITE. IT IS ADMITTED THAT THE REASON FOR THE TAKE-OVER WAS THAT ABLE COULD NOT HAVE COMPLETED THE JOB IF IT HAD TO PAY UNION RATES. THIRDLY, THERE IS THE DECLINE IN ABLE'S BUSINESS CONTRASTED WITH THE GROWTH OF KEM'S BUSINESS, THE LATTER OPERATING ON A NON-UNION BASIS. THIS IN TURN IS FOLLOWED BY THE "LEASE" OF UP TO 65% OF ABLE'S EQUIPMENT BY KEM'S, TOGETHER WITH A TAKE-OVER OF SOME OF ABLE'S EMPLOYEES. THE CLOSE CO-OPERATION AND ADVICE WHICH EXISTED BETWEEN BETTENDORF AND HIS SONS-IN-LAW PRIOR TO THE FORMATION OF KEM'S CONTINUES, BUT IN THE OPPOSITE DIRECTION. IT IS NOW THE SONS-IN-LAW WHO ARE ASSISTING BETTENDORF, PRESUMABLY BECAUSE ABLE, WHICH HAD



HERETOFORE CARRIED ON A NON-UNION BUSINESS IN THE KITCHENER-WATERLOO AREA, IS NO LONGER ABLE SO TO OPERATE IN THAT AREA. FINALLY, REGARD MUST BE HAD TO THE NATURE OF THE BUSINESS BEING CARRIED ON BY ABLE. NONE OF THE WITNESSES HAD EVER HEARD OF THE SALE OF A SMALL MASONRY BUSINESS IN THE ORDINARY SENSE OF A SALE OF A BUSINESS AS A GOING CONCERN. ALL AGREED THAT SUCH A BUSINESS DOES NOT HAVE GOODWILL AND THAT THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES.

IT SEEMS TO US THAT WHEN THESE FACTS TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE ARE CONSIDERED, WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS SOMETHING MORE THAN A MERE RENTING OF EQUIPMENT AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. IN OUR VIEW, THE TRANSACTION IN QUESTION IS A "LEASE" OR "OTHER MANNER OF DISPOSITION" BY ABLE TO KEM'S OF THE NON-UNION SIDE OF ABLE'S "BUSINESS" IN THE KITCHENER-WATERLOO AREA AND, SUBJECT TO WHAT FOLLOWS BELOW, FALLS WITHIN THE DEFINITION OF "SELLS" IN 47A(1) OF THE ACT. WE EMPHASIZE, HOWEVER, THAT OUR CONCLUSION IS NOT BASED ON ANY ONE CIRCUMSTANCE OR INCIDENT BUT ON ALL THE FACTS AND CIRCUMSTANCES OF THE CASE VIEWED AS A WHOLE.

THE SOLE QUESTION REMAINING IN OUR MINDS IS WHETHER WE ARE PRECLUDED FROM SO FINDING BY REASON OF COURT DECISIONS IN THE FOLLOWING CASES: GULF ISLANDS NAVIGATION LTD. V. SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA (CANADIAN DISTRICT) ET AL (1959) 18 D.L.R. 216; PARKHILL BEDDING & FURNITURE LTD. V. THE INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION, LOCAL 714, (1961) 26 D.L.R. (2ND) 589; AND AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 44 V. NATIONAL PAPER BOX LTD. (1964) 64 C.L.L.C. 714,002. WHILE A READING OF THESE CASES LEAVES ONE WITH THE DEFINITE IMPRESSION THAT THE COURTS THERE INVOLVED WERE INCLINED TO PLACE A RATHER RESTRICTIVE INTERPRETATION ON THE BRITISH COLUMBIA AND MANITOBA LEGISLATION, AFTER CAREFUL CONSIDERATION, WE ARE OF THE OPINION THAT THESE CASES ARE DISTINGUISHABLE FROM THE ONE BEFORE US.

IN THE FIRST PLACE, THE NATURE OF THE BUSINESS DIFFERS CONSIDERABLY FROM THAT INVOLVED IN THE PRESENT CASE. WE HAVE FOUND THAT THE NATURE OF THE BUSINESS IS A FACTOR WHICH MUST BE CONSIDERED IN DETERMINING WHAT CONSTITUTES A "SALE" THEREOF.

• IN THE SECOND PLACE, SECTION 47A IS WORDED DIFFERENTLY FROM THAT OF THE BRITISH COLUMBIA AND MANITOBA LEGISLATION. THE MANITOBA ACT REFERS ONLY TO THE PASSING OF THE OWNERSHIP (EMPHASIS ADDED) OF A BUSINESS AND, WHILE THE BRITISH COLUMBIA LEGISLATION PROVIDES FOR A TRANSACTION INVOLVING A SALE, LEASE, OR TRANSFER, IT DOES NOT INCLUDE THE VERY MUCH BROADER LANGUAGE "OR ANY OTHER MANNER OF DISPOSITION". ALTHOUGH IT IS TRUE THAT WHAT MUST BE DISPOSED OF IS A BUSINESS, NEVERTHELESS IT IS PROPER IN CONSTRUING THAT WORD TO HAVE REGARD TO THE VERY WIDE DEFINITION GIVEN TO "SELLS" IN THE ONTARIO ACT.

IT IS EQUALLY IMPORTANT TO NOTE THAT WHILE THE BRITISH COLUMBIA AND MANITOBA ACTS PROVIDE THAT WHERE A SALE OF A BUSINESS OR THE PASSING OF OWNERSHIP OF A BUSINESS TAKES PLACE, ANY COLLECTIVE AGREEMENT BINDING ON THE VENDOR AUTOMATICALLY BINDS THE PURCHASER, THIS IS NOT THE CASE UNDER THE ONTARIO ACT. SECTION 47A PROVIDES THAT WHERE A SALE TAKES PLACE, THE UNION MERELY RETAINS ITS BARGAINING RIGHTS AND IS LEFT WITH THE TASK OF BARGAINING FOR A NEW AGREEMENT WITH THE PURCHASER. IN OTHER WORDS, THE CONSEQUENCES OF A SALE UNDER THE BRITISH COLUMBIA AND



MANITOBA ACTS DIFFER CONSIDERABLY FROM THOSE UNDER SECTION 47A, AND THE MANITOBA COURT OF APPEAL APPEARS TO HAVE BEEN INFLUENCED BY THIS FACT, FOR THE COURT CONCLUDES ITS JUDGMENT IN THE PARKHILL BEDDING CASE (SUPRA, AT PAGE 599) BY SAYING THAT IT WAS HARD TO THINK THAT WHEN THE PURCHASER PURCHASED THE ASSETS, IT ACQUIRED THEM "SUBJECT TO THE BURDEN OF A COLLECTIVE AGREEMENT" (EMPHASIS ADDED). IN OUR VIEW, IT IS PROPER TO CONSIDER THESE VERY DIFFERENT CONSEQUENCES IN CONSTRUING SECTION 47A.

IN SUM, THEN, AND HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT SECTION 47A(2) APPLIES TO THE TRANSACTION BETWEEN ABLE AND KEM'S AND THAT THEREFORE THE APPLICANT UNION WAS ENTITLED TO GIVE NOTICE TO BARGAIN TO KEM'S UNDER THAT SUBSECTION. NO BARGAINING HAS YET TAKEN PLACE. THE BOARD THEREFORE DIRECTS THAT THE PARTIES MEET, BARGAIN AND MAKE EVERY REASONABLE EFFORT TO ARRIVE AT A COLLECTIVE AGREEMENT AND REPORT THEIR PROGRESS TO THE BOARD ON OR BEFORE MONDAY, NOVEMBER 30TH, 1964."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE EVIDENCE IN THIS CASE DOES NOT SUPPORT THE FINDING OF THE MAJORITY THAT THE RENTAL OF EQUIPMENT AND WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS A LEASE OR OTHER MANNER OF DISPOSITION WITHIN THE MEANING OF SECTION 47A OF THE ONTARIO LABOUR RELATIONS ACT.

THE MAJORITY DECISION ON PAGE 5 MAKES THE FOLLOWING STATEMENTS:

"...NONE OF THE WITNESSES HAD EVER HEARD OF THE SALE OF A SMALL MASONRY BUSINESS IN THE ORDINARY SENSE OF A SALE OF A BUSINESS AS A GOING CONCERN. ALL AGREED THAT SUCH A BUSINESS DOES NOT HAVE GOODWILL AND THAT THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES.

IT SEEMS TO US THAT WHEN THESE FACTS TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE ARE CONSIDERED, WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS SOMETHING MORE THAN A MERE RENTING OF EQUIPMENT AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. IN OUR VIEW THE TRANSACTION IN QUESTION IS A 'LEASE' OR 'OTHER MANNER OF DISPOSITION' BY ABLE TO KEM'S OF THE NON-UNION SIDE OF ABLE'S 'BUSINESS' IN THE KITCHENER-WATERLOO AREA AND, SUBJECT TO WHAT FOLLOWS BELOW, FALLS WITHIN THE DEFINITION OF 'SELLS' IN 47A(1) OF THE ACT. ..."

WHILE IT MAY WELL BE THAT CERTAIN BUSINESSES ARE DIVISABLE, IN THE INSTANT CASE, BECAUSE OF THE VERY NATURE OF THE BUSINESS, IT CAN ONLY EXIST AS A SINGLE INDIVISIBLE ENTITY. THE MASONRY CONTRACTING BUSINESS IS A SERVICE BUSINESS WHICH IS ENTIRELY DEPENDENT ON THE ABILITY OF THE OWNER OR OWNERS TO CONVINCE PROSPECTIVE CUSTOMERS THAT THEY HAVE THE KNOWLEDGE, SKILL AND ABILITY TO PERFORM THE REQUIRED WORK AT A COMPETITIVE PRICE. BY WHAT MEANS THEY FULFILL THE CONTRACT IS ENTIRELY WITHIN THEIR DISCRETION UNLESS THE CONTRACT PROVIDES OTHERWISE

THUS THEY MAY

- (A) SUBLET THE CONTRACT AND PROVIDE GENERAL SUPERVISION ONLY OR
- (B) RENT PART OR ALL OF THE EQUIPMENT NECESSARY TO PERFORM THE WORK OR
- (C) UTILIZE ONLY THEIR OWN WORK FORCE AND EQUIPMENT.

BY WHICHEVER OF THE ABOVE MEANS OR COMBINATIONS OF THEM THEY SATISFY THEIR CONTRACTUAL OBLIGATION, THEY ARE IN THE BUSINESS OF MASONRY CONTRACTING. THE RECEIVING OF THE CONTRACT IS THE BUSINESS, THE PERFORMANCE OF THE WORK, WHILE NECESSARY FOR THE FULFILLMENT OF THE CONTRACT, IS INCIDENTAL TO IT. IT IS NOT THE BUSINESS PER SE.

IT IS COMMON KNOWLEDGE IN THE CONSTRUCTION INDUSTRY THAT SOME OF THE LARGEST CONTRACTORS IN CANADA DO NOT OWN THEIR OWN EQUIPMENT BUT RENT IT FROM COMPANIES WHO ARE IN THE CONSTRUCTION RENTAL EQUIPMENT BUSINESS. IT CAN HARDLY BE SAID THEY DO NOT OPERATE A BUSINESS BECAUSE THEY DO NOT OWN THEIR OWN EQUIPMENT. LIKEWISE, MANY SPECULATIVE BUILDERS HAVE NEITHER EMPLOYEES OR EQUIPMENT AND IT CANNOT BE SAID THAT THEY DO NOT OPERATE A BUSINESS IN THE CONSTRUCTION FIELD.

THE EVIDENCE IN THE INSTANT CASE IS THAT KEM'S MASONRY IS ENGAGED IN THE MASONRY CONTRACTING BUSINESS AND THAT IT DOES NOT OWN EQUIPMENT. ABLE CONSTRUCTION IS LIKEWISE ENGAGED IN THE MASONRY CONTRACTING BUSINESS AND DOES OWN EQUIPMENT. THERE IS NOT EVIDENCE THAT ABLE CONSTRUCTION WAS IN THE BUSINESS OF RENTING EQUIPMENT OR HAD RENTED ITS EQUIPMENT BEFORE, THIS BEING AN ISOLATED TRANSACTION. INDEED, THE FACT THAT THE EQUIPMENT COULD BE RECALLED ON 48 HOURS' NOTICE LENDS EMPHASIS TO THE TEMPORARY NATURE OF THIS ISOLATED TRANSACTION.

IN MY OPINION THE RENTAL OF EQUIPMENT AND THE SUBLETTING OF ONE CONTRACT, IN THE CIRCUMSTANCES OF THIS CASE, DOES NOT CONSTITUTE A SALE, LEASE, TRANSFER, OR OTHER MANNER OF DISPOSITION OF A BUSINESS WITHIN THE MEANING OF SECTION 47A.

CERTAINLY IT WAS NOT A SALE OF THE BUSINESS, FOR ABLE CONSTRUCTION CONTINUED IN BUSINESS THROUGHOUT, ACTIVELY SEEKING CONTRACTS, AND PROTECTING ITS ABILITY TO PERFORM SUCH BUSINESS, IF SECURED, BY PROVIDING FOR THE RETURN OF ITS EQUIPMENT ON 48 HOURS' NOTICE. NEITHER WAS IT A SALE OF A PART OF ITS BUSINESS, FOR IT WAS NOT IN THE BUSINESS OF RENTING EQUIPMENT. CLEARLY, IT DID NOT DISPOSE OF ITS BUSINESS OR A PART THEREOF, FOR TO "DISPOSE OF" MEANS TO GET RID OF OR "GIVE UP OWNERSHIP" AND WHEN USED IN CONJUNCTION WITH "SALE" NECESSARILY IMPLIES TO DIVEST ONESELF OF OWNERSHIP. THIS IT DID NOT DO.

THE MAJORITY DECISION STATES THAT WHAT WAS DISPOSED OF WAS "THE NON-UNION SIDE OF ABLE'S BUSINESS IN THE KITCHENER-WATERLOO AREA". SECTION 47A APPEARS TO HAVE BEEN ENACTED FOR THE PURPOSE OF PROTECTING THE BARGAINING RIGHTS OF A UNION WHEN A SALE TAKES PLACE. IF WHAT HAS BEEN DISPOSED OF IN THE INSTANT CASE IS "NON-UNION" IT IS DIFFICULT TO SEE WHAT APPLICATION SECTION 47A HAS.

INDEED, IN THESE CIRCUMSTANCES TO REQUIRE KEM'S TO BARGAIN WITH THE BRICKLAYERS UNION FOR A GROUP OF EMPLOYEES WHO HAVE NEVER BELONGED TO THE BRICKLAYERS UNION OR SHOWN ANY DESIRE TO DO SO, IS TO DENY TO THE EMPLOYEES THEIR MOST BASIC FUNDAMENTAL RIGHT UNDER THE LABOUR RELATIONS ACT TO JOIN A TRADE UNION OF THEIR OWN CHOICE.

FOR THE ABOVE REASONS I WOULD HAVE DISMISSED THIS APPLICATION."

ADDENDA

THE FOLLOWING APPLICATIONS WERE INADVERTENTLY OMITTED FROM THE OCTOBER 1964 MONTHLY REPORT.

7631-63-R: LOBLAW WORKERS' COUNCIL, (APPLICANT) V. SUPER CITY LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER) V. FOOD HANDLERS' LOCAL UNION 175 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (INTERVENER) V. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (INTERVENER).

UNIT: "ALL EMPLOYEES OF SUPER CITY LIMITED IN ITS STORES IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT). (APPLICANT CERTIFIED).

9234-64-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) V. RIDEAU CONCRETE FORMS LIMITED (RESPONDENT).

- AND -

9235-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 93 (APPLICANT) V. RIDEAU CONCRETE FORMS LIMITED (RESPONDENT).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

CERTIFICATION WAS GRANTED BY THE BOARD AS FOLLOWS:  
TO THE CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CARPENTERS AND CARPENTERS' APPRENTICES." (46 EMPLOYEES IN THE UNIT).

TO THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 93, AFTER A REPRESENTATION VOTE.

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING

FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	9
NUMBER OF BALLOTS CAST	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No.1, N.C.C.L.	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION No. 93	5

ON SEPTEMBER 4, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"...THE RESPONDENT HAS REQUESTED A HEARING GIVING AS A REASON THE FACT THAT TWO UNIONS HAVE MADE OVERLAPPING APPLICATIONS AFFECTING ITS EMPLOYEES. NEITHER OF THE TWO UNIONS HAVE REQUESTED A HEARING. THIS IS A MATTER WITHIN THE DISCRETION OF THE BOARD (SEE SECTION 75(9A) OF THE LABOUR RELATIONS ACT). HAVING REGARD TO OUR DECISION (INFRA) TO HOLD A REPRESENTATION VOTE AND TO THE FACT THAT FOLLOWING THE VOTE AN OPPORTUNITY IS GIVEN ALL PARTIES TO FILE A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS RESPECTING THE VOTE, WE DO NOT DEEM IT ADVISABLE TO DIRECT A HEARING AT THIS TIME".



# STATISTICAL TABLES FOR NOVEMBER 1964

TABLE I

## APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	NOVEMBER 1964	1ST 8 MONTHS OF 1964-65	FISCAL YEAR 1963-64
I. CERTIFICATION	93	630	509
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	60	55
III. DECLARATION OF SUCCESSOR STATUS	-	3	21
IV. CONCILIATION SERVICES	-*	603	771
V. DECLARATION THAT STRIKE UNLAWFUL	5	33	27
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	4
VII. CONSENT TO PROSECUTE	6	58	107
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	121	104
IX MISCELLANEOUS	3	17	14
TOTAL	<u>126</u>	<u>1530</u>	<u>1612</u>

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE II

## HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	NOVEMBER 1964	1ST 8 MONTHS OF 1964-65	FISCAL YEAR 1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	100	762	722

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	NOVEMBER 1964	1ST 8 MONTHS OF FISCAL YEAR. 1964-65                      1963-64	
I. CERTIFICATION	91	589	532
II. DECLARATION TERMINATING BARGAINING RIGHTS	2	62	74
III. DECLARATION OF SUCCESSOR STATUS	-	6	21
IV. CONCILIATION SERVICES	4	688	780
V. DECLARATION THAT STRIKE UNLAWFUL	6	33	27
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	2
VII. CONSENT TO PROSECUTE	10	57	110
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	16	124	105
IX. MISCELLANEOUS	4	15	7
TOTAL	<u>133</u>	<u>1579</u>	<u>1658</u>

TABLE IV  
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
NOVEMBER 1964	1ST 8 MONTHS FISCAL YEAR 1964-65	1963-64	NOVEMBER 1964	1ST 8 MONTHS FISCAL YEAR 1964-65	1963-64
<u>I. CERTIFICATION</u>					
GRANTED	73	438	378	1696	13896
DISMISSED	9	95	95	397	4866
WITHDRAWN	9	56	60	106	2273
TOTAL	91	589	533	2199	21035
					14662
<u>II. TERMINATION OF BARGAINING RIGHTS</u>					
GRANTED	1	40	50	2	384
DISMISSED	1	20	21	5	315
WITHDRAWN	-	2	3	-	82
TOTAL	2	62	74	7	781
					1944

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION (CONTINUED)

NUMBER OF APPLICATIONS			
	NOVEMBER	1ST 8 MONTHS FISCAL YEAR	
	1964	1964-65	1963-64
III. <u>CONCILIATION SERVICES*</u>			
REFERRED	2	632	725
DISMISSED	-	26	14
WITHDRAWN	2	30	41
TOTAL	4	688	780
IV. <u>DECLARATION THAT STRIKE</u>			
<u>UNLAWFUL</u>			
GRANTED	1	12	6
DISMISSED	1	5	3
WITHDRAWN	4	16	18
TOTAL	6	33	27
V. <u>DECLARATION THAT LOCKOUT</u>			
<u>UNLAWFUL</u>			
GRANTED	-	1	-
DISMISSED	-	1	1
WITHDRAWN	-	3	1
TOTAL	-	5	2
VI. <u>CONSENT TO PROSECUTE</u>			
GRANTED	4	11	37
DISMISSED	1	11	9
WITHDRAWN	5	35	64
TOTAL	10	57	110

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1964	1ST 8 MONTHS OF FISCAL YEAR. 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	4	17	16
POST-HEARING VOTE	7	22	44
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	7	9
POST-HEARING VOTE	5	39	38
BALLOTS NOT COUNTED	-	-	1
TOTAL	16	85	108

\*INCLUDE APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1964	1ST 8 MONTHS OF FISCAL YEAR. 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	1	9	25
TOTAL	1	9	30

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

DECEMBER, 1964



ONTARIO

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1964

BARGAINING AGENTS CERTIFIED DURING DECEMBER

No Vote Conducted

9367-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LADISH CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TIMESTUDY MEN, SALESMEN, ASSISTANT ACCOUNTANT, PERSONNEL DEPARTMENT AND ONE SECRETARY EACH TO THE GENERAL MANAGER AND THE SALES MANAGER." (32 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 438 )

9407-64-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. SHOPSY'S FOODS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 2 HUXLEY ROAD, WESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRUCK DRIVERS AND DRIVERS' HELPERS, AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (119 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT 5 NAMED EMPLOYEES EXERCISE MANAGERIAL AUTHORITY AND ARE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD ALSO NOTED THE AGREEMENT OF THE PARTIES THAT 3 NAMED EMPLOYEES PERFORM THE FUNCTIONS OF SECURITY GUARDS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT 5 NAMED EMPLOYEES HAVE THE STATUS OF INDEPENDENT CONTRACTORS AND ARE NOT EMPLOYEES OF THE RESPONDENT.

9461-64-R: SUDBURY MINE MILL AND SMELTER WORKERS UNION LOCAL 598, AFFILIATED WITH THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE SUDBURY DISTRICT AND WHO ARE EMPLOYED IN THE RESPONDENT'S SUDBURY DISTRICT GEOLOGICAL DEPARTMENT AS EXPLORATION DIAMOND DRILLERS OR HELPERS, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN AND ANY EMPLOYEES IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND THE APPLICANT DATED AUGUST 26TH, 1963." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE SPECIAL CIRCUMSTANCES IN THIS CASE).

(SEE INDEXED ENDORSEMENT PAGE 440)

9462-64-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. OTIS ELEVATOR COMPANY LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN SPECIFIERS, SPECIFIERS AND SPECIFIER TRAINEES EMPLOYED IN THE DRAFTING AND SPECIFYING DEPARTMENT OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SECTION SUPERVISORS, PERSONS ABOVE THE RANK OF SECTION SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EFFECTIVE MAY 2ND, 1962."  
(7 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT 2 NAMED EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

9478-64-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GOODYEAR SERVICE STORES, A DIVISION OF THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GOODYEAR SERVICE STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SERVICE MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

(WRITTEN REASONS).

9522-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HOTEL SELBY LTD. (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAP MEN, BARTENDERS, BEVERAGE ROOM WAITERS, BAR BOYS AND IMPROVERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (10 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE WRITTEN AGREEMENT OF THE PARTIES THAT TWO NAMED EMPLOYEES EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

9536-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. AMHERSTBURG 5¢ TO \$1.00 STORE LTD. (RESPONDENT).  
(SEE INDEXED ENDORSEMENT PAGE 442 ).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9562-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 595 (APPLICANT) V. KEENE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT ONE NAMED EMPLOYEE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

9563-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. KEENE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT A NAMED EMPLOYEE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

9582-64-R: TEAMSTERS LOCAL UNION No. 230, READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, I.B. OF T.C.W. & H. OF A. (APPLICANT) V. CEDARHURST PAVING CO. LIMITED (RESPONDENT).

UNIT: "ALL DUMP TRUCK OPERATORS, FLOAT DRIVERS, SERVICE TRUCK DRIVERS AND GAS TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (17 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 442).

9583-64-R: TEAMSTERS LOCAL UNION No. 230, READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, I.B. OF T.C.W. & H. OF A. (APPLICANT) V. K.J. BEAMISH CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL DUMP TRUCK OPERATORS, FLOAT DRIVERS, SERVICE TRUCK DRIVERS AND GAS TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET; SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (26 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE DUMP TRUCK OPERATORS, FLOAT DRIVERS, SERVICE TRUCK DRIVERS AND GAS TRUCK DRIVERS ARE INCLUDED IN THE BARGAINING UNIT WHEN ENGAGED IN THE OPERATIONS OF THE RESPONDENT MORE PARTICULARLY DESCRIBED IN ITS DECISION DATED NOVEMBER 23RD, 1964, IN CEDARHURST PAVING CO. LIMITED, BOARD FILE No. 9582-64-R...

THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.



IN ITS DECISION DATED NOVEMBER 23RD, 1964, THE BOARD MADE CERTAIN FINDINGS RESPECTING THE CLASSIFICATIONS TO BE INCLUDED IN THE BARGAINING UNIT AND DIRECTED THE RESPONDENT TO FILE LISTS OF EMPLOYEES FOR THESE CLASSIFICATIONS. IN CONNECTION WITH THE DESCRIPTION OF THE BARGAINING UNIT, THERE REMAINS FOR CONSIDERATION THE QUESTION OF THE APPROPRIATE GEOGRAPHIC AREA. FOR REASONS GIVEN IN THE DECISION OF THE BOARD DATED DECEMBER 14TH, 1964, IN CEDARHURST PAVING CO. LIMITED, BOARD FILE NO. 9582-64-R, THE BOARD HAS DETERMINED THAT THE AMENDED AREA PROPOSED BY THE APPLICANT IS THE APPROPRIATE AREA."

9612-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SAPAWE GOLD MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MINE IN McCaul TOWNSHIP, SAVE AND EXCEPT SHIFT BOSSES OR FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS OR FOREMAN, OFFICE STAFF, CHIEF CHEMIST, ASSISTANT CHIEF CHEMIST AND SECURITY GUARDS." (29 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 451)

9615-64-R: THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC (APPLICANT) V. DOMTAR PACKAGING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS HINDE AND DAUCH DIVISION AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SECURITY GUARDS." (107 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ONE NAMED EMPLOYEE IS NOT INCLUDED IN THE BARGAINING UNIT.

9620-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DWOR METAL COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF PORT COLBORNE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9621-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MARINE SALVAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF PORT COLBORNE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (37 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT SHIP-KEEPERS AND PERSONS EMPLOYED ON SHIPS IN TRANSIT ARE NOT INCLUDED IN THE BARGAINING UNIT.

9642-64-R: THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101, CANADIAN LABOUR CONGRESS (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN SUDBURY AND SUBURBAN AREA, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (210 EMPLOYEES)

IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9648-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. TRADES & LABOUR CLUB (BRANTFORD) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9649-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. BRANTFORD AIR FORCE CLUB (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9650-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. BRANTFORD EX-IMPERIAL VETERANS' SOCIAL CLUB (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

9651-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 869 (APPLICANT) v. THE ROYAL TRUST COMPANY (RESPONDENT).

UNIT: "ALL ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT OTTAWA." (5 EMPLOYEES IN THE UNIT).

9656-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. FASTER LINEN SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT A NAMED EMPLOYEE EXERCISES MANAGERIAL FUNCTIONS AND IS EXCLUDED FROM THE BARGAINING UNIT.

9657-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. SUPERIOR PRESSED METALS LTD. (RESPONDENT).

UNIT: "ALL CRANE OPERATORS AND PERSONS PRIMARILY ENGAGED IN THE REPAIR AND MAINTENANCE OF SUCH EQUIPMENT EMPLOYED BY THE RESPONDENT IN ITS YARD AT SCARBOROUGH." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE APPLICANT'S HISTORY OF COLLECTIVE BARGAINING FOR EMPLOYEES OF EMPLOYERS IN INDUSTRIES SIMILAR TO THAT OF THE RESPONDENT).

9672-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. GEORGE RATHBONE LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (34 EMPLOYEES IN THE UNIT).

9674-64-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. ROBSON-LANG (BARRIE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STATIONARY ENGINEERS AND THEIR HELPERS." (153 EMPLOYEES IN THE UNIT).

9678-64-R: HOTEL, MOTEL, AND RESTAURANT EMPLOYEES' UNION, LOCAL No. 899, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. L. & G. HOTEL CO. LIMITED, CARRYING ON BUSINESS AS LLOYD GEORGE HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

9681-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, A.F. OF L., C.I.O., C.L.C. LOCAL 721 (APPLICANT) v. ANGLIN-NORCROSS ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE WESTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "IRON WORKERS" INCLUDES RIGGERS, WELDERS, MACHINERY MOVERS, SASH AND DOOR ERECTORS AND ORNAMENTAL IRON WORKERS."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT PROPOSES A BARGAINING UNIT IN TERMS OF CLASSIFICATIONS. THE RESPONDENT PROPOSES A BARGAINING UNIT IN TERMS OF THE WORK PERFORMED BY CERTAIN EMPLOYEES. THE BOARD HAS BEFORE IT NUMEROUS COLLECTIVE AGREEMENTS AND A NUMBER OF ITS PREVIOUS DECISIONS DEALING WITH THIS PROBLEM. AFTER DUE CONSIDERATION, WE HAVE COME TO THE CONCLUSION THAT THE UNIT SHOULD IN THIS AND SUBSEQUENT CASES BE DESCRIBED IN TERMS OF A SINGLE CLASSIFICATION, NAMELY, IRON WORKERS, FOLLOWED BY A CLARITY NOTE.

THERE REMAINS FOR CONSIDERATION THE QUESTION OF THE APPROPRIATE GEOGRAPHIC AREA. THE APPLICANT PROPOSES AN AREA EMBRACING THE DISTRICT OF MUSKOKA AND ALL OF THE COUNTIES OF DUFFERIN, DURHAM, HALIBURTON, NORTHUMBERLAND, ONTARIO, PEEL, PETERBOROUGH, PRINCE EDWARD, SIMCOE, VICTORIA AND YORK, AND



THE COUNTY OF HASTINGS, THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY, AND THURLOW. ALSO IN THE COUNTY OF HALTON, THE PREMISES OF THE FORD MOTOR CO. THIS AREA CORRESPONDS TO THE ESTABLISHED GEOGRAPHICAL JURISDICTION OF THE APPLICANT. THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION ARE WORKING IN THE CITY OF TORONTO. THE RESPONDENT SUBMITS THAT THE REGULAR TORONTO AREA, NAMELY 25 MILES FROM THE TORONTO CITY HALL PLUS NEWMARKET PLUS AN AREA ADJOINING NEWMARKET IS THE APPROPRIATE AREA IN THIS CASE.

IN SUPPORT OF ITS SUBMISSION, THE APPLICANT RELIES ON AN AREA PATTERN OR HISTORY ESTABLISHED IN NUMEROUS COLLECTIVE AGREEMENTS WHICH IT HAS WITH EMPLOYERS IN THE STRUCTURAL STEEL INDUSTRY AND WITH EMPLOYERS ENGAGED IN MILLWRIGHT, ORNAMENTAL BRONZE AND IRON, WELDING, AND SASH AND DOOR WORK. WITH ONE OR TWO EXCEPTIONS, NONE OF THE EMPLOYERS BOUND BY THESE COLLECTIVE AGREEMENTS IS ENGAGED IN GENERAL CONTRACTING. THE RESPONDENT, ON THE OTHER HAND, IS A GENERAL CONTRACTOR WHO, ON THE JOB IN QUESTION IN THIS CASE, IS ENGAGED IN CERTAIN STRUCTURAL STEEL, "RIGGING" AND LIMITED MACHINERY MOVING OPERATIONS NORMALLY, THOUGH NOT INVARIABLY, PERFORMED BY SUB-CONTRACTORS. FOR THIS REASON, THE RESPONDENT CONTENTS THAT THE BOARD SHOULD HAVE REGARD TO THE AREA FOUND IN AGREEMENTS BINDING ON GENERAL CONTRACTORS INCLUDING THE PRESENT RESPONDENT, WHICH AREA IS ADMITTED TO BE THE REGULAR TORONTO AREA DESCRIBED ABOVE. THE RESPONDENT ALSO REFERS TO THE FACT THAT THE BOARD HAS NEVER RECOGNIZED THE AREA PROPOSED BY THE APPLICANT IN ANY CERTIFICATE, THAT IT HAS IN FACT REJECTED SUCH A CLAIM IN SOME CASES INVOLVING JOBS OUTSIDE THE REGULAR TORONTO AREA, AND FURTHER SUBMITS THAT THE BOARD SHOULD HAVE REGARD FOR AREA PATTERNS ESTABLISHED IN OTHER BRANCHES OF THE CONSTRUCTION INDUSTRY.

IN A RECENT DECISION, CEDARHURST PAVING CO. LIMITED, BOARD FILE NO. 9582-64-R, THE CONSTRUCTION INDUSTRY DIVISION HAD OCCASION TO DEAL WITH A SOMEWHAT SIMILAR PROBLEM, ALTHOUGH THERE THE ROLES OF THE PARTIES WERE REVERSED. THE RESPONDENT IN THAT CASE ARGUED THAT HISTORY OR PATTERN SHOULD BE FOLLOWED AND THAT THE CERTIFICATE SHOULD BE LIMITED TO AN AREA LESS THAN, ALTHOUGH CONTAINED WITHIN, THE REGULAR TORONTO AREA. IN REJECTING THIS SUBMISSION, THE BOARD SAID:

WHILE PATTERN OR HISTORY HAS BEEN AN IMPORTANT FACTOR IN THE DETERMINATION OF APPROPRIATE GEOGRAPHIC AREAS, THE BOARD IN SEVERAL CASES HAS DECLINED TO FOLLOW AN ESTABLISHED PATTERN. THUS, IN ABLE CONSTRUCTION, O.L.R.B. MONTHLY REPORT, APRIL, 1964, PAGE 6, THE BOARD SAID AT PAGE 7:

HOWEVER, AS WAS POINTED OUT IN BALL BROTHERS LTD. (SUPRA), THE FACT THAT A PARTICULAR UNION HAS ESTABLISHED A PATTERN OF COLLECTIVE BARGAINING FOR A GIVEN AREA IS NOT THE ONLY FACTOR WHICH THE BOARD TAKES INTO CONSIDERATION. THE JURISDICTION OF OTHER LOCAL UNIONS IN THE AREA AND THE PATTERN OF COLLECTIVE BARGAINING OF THE OTHER UNIONS MUST ALSO BE CONSIDERED. IN OTHER WORDS, THE BOARD IS ANXIOUS AS FAR AS POSSIBLE, TO ESTABLISH AREAS WHICH WILL BE UNIFORM FOR EMPLOYERS AND TRADE UNIONS ALIKE.

SEE ALSO UNICRETE CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, MAY, 1963, P. 67. FOR A DISCUSSION OF THE FACTORS WHICH THE BOARD HAS CONSIDERED IN DETERMINING GEOGRAPHIC AREAS, SEE SUPPLEMENT TO



O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, PP. 1-13. SEE ALSO  
P.R. CONNOLLY CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT,  
DECEMBER, 1963, P. 502.

HOWEVER, THE RESPONDENT ARGUES IN EFFECT THAT REGARD SHOULD BE HAD TO THE HISTORY OR PATTERN IN DIFFERENT BRANCHES OF THE CONSTRUCTION INDUSTRY. WHILE IT MAY BE THAT UNIFORMITY REGARDING GEOGRAPHIC AREA WILL NOT BE POSSIBLE TO ACHIEVE IN ALL CASES, IN OUR VIEW, DEPARTURES FROM THE STANDARD FORM SHOULD BE LIMITED. IF THE BOARD WERE TO ADOPT THE RESPONDENT'S PROPOSED AREA IN THE PRESENT CASE, IT WOULD BE EXTREMELY DIFFICULT FOR THE BOARD TO REFUSE TO RECOGNIZE AREA PATTERNS ESTABLISHED IN OTHER BRANCHES OF THE CONSTRUCTION INDUSTRY WHICH DO NOT CONFORM TO THE ESTABLISHED AREA. YET IT IS CLEAR THAT A NUMBER OF DIFFERENT AREAS DO PREVAIL AS FOR EXAMPLE IN THE COLLECTIVE AGREEMENTS WHICH THE ELECTRICAL WORKERS, THE PLUMBERS, THE MARBLE MASONS, THE MILLWRIGHTS, THE SHEET METAL WORKERS AND THE IRON WORKERS HAVE WITH VARIOUS EMPLOYERS AND EMPLOYERS' ASSOCIATIONS. MOREOVER, MANY OF THESE AREAS DO NOT COINCIDE ONE WITH THE OTHER. CONSEQUENTLY, TO ACCEPT THE RESPONDENT'S SUBMISSION IN THIS CASE WOULD LEAD INEVITABLY TO THE ESTABLISHMENT BY THE BOARD OF AT LEAST EIGHT SEPARATE AREAS CENTERING ON TORONTO. IN THIS CONNECTION, IT SHOULD BE NOTED THAT THE BOARD HAS REFUSED THE REQUEST OF THE ELECTRICAL WORKERS TO DEPART FROM THE ESTABLISHED TORONTO AREA DESPITE A PATTERN OF BARGAINING TO THE CONTRARY.

IT IS ALSO OF INTEREST TO NOTE THAT IN A RECENT CASE BEFORE THE BOARD THE PLUMBERS REQUESTED AND OBTAINED THE REGULAR AREA ALTHOUGH THIS DIFFERS FROM THE AREA IN THEIR AGREEMENT WITH THE TORONTO LABOUR BUREAU.

THE SAME CONSIDERATIONS APPLY TO THE PRESENT CASE. IF THE BOARD WERE TO ACCEDE TO THE APPLICANT'S REQUEST, IT WOULD BE VIRTUALLY IMPOSSIBLE FOR IT TO REFUSE SIMILAR REQUESTS FROM OTHER UNIONS WHOSE COLLECTIVE AGREEMENTS WITH EMPLOYERS AND EMPLOYERS' ASSOCIATIONS ARE EFFECTIVE OVER DIFFERING AREAS. WHILE IT MAY BE THAT A CASE COULD BE MADE OUT FOR ESTABLISHING AN AREA SEPARATE AND APART FROM THE REGULAR TORONTO AREA, WE CAN SEE NO JUSTIFICATION FOR ESTABLISHING SEVEN AND PERHAPS MORE SUCH AREAS. ON THE OTHER HAND, IT WOULD BE QUITE IMPROPER TO TAKE THE AREA PROPOSED BY THE APPLICANT AS THE APPROPRIATE AREA BINDING ON ALL TRADE UNIONS AND EMPLOYERS WHOSE COLLECTIVE AGREEMENTS CONTAIN AREAS DIFFERING FROM THE REGULAR TORONTO AREA. SUCH AN AREA WILL HAVE TO AWAIT EITHER APPROPRIATE ACTION BY THE PARTIES THEMSELVES OR A LATER DETERMINATION BY THE BOARD IN A CASE WHERE ALL INTERESTED PERSONS HAVE HAD AN OPPORTUNITY TO MAKE THEIR REPRESENTATIONS."

9684-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
(APPLICANT) v. MEDALLION ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING

FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF PARTIES).

9685-64-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. WESTWOOD PANTS MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SHIPPERS, AND SALES AND OFFICE STAFF." (53 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9693-64-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MUIR'S CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, SUPERVISORS, PERSONS ABOVE THE RANK OF DISPATCHER OR SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

9694-64-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RAYSON & POWELL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, SUPERVISORS, PERSONS ABOVE THE RANK OF DISPATCHER OR SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

9695-64-R: GENERAL TRUCK DRIVERS UNION LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TRANS-CANADA HIGHWAY EXPRESS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

9696-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. C.A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

9699-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. VAIL'S FABRIC CARE LTD. (RESPONDENT).

UNIT: "ALL DRIVERS AND DRIVER SALESMEN OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT

SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

9700-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. DELHI INN HOTEL. (DELHI PUBLIC HOUSE) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DELHI, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9705-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. WILLIAM HARRIS ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF PARTIES).

9710-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. DOMINION ELECTRIC ENTERPRISES (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF PARTIES).

9711-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION. AFL-CIO-CLC (APPLICANT) V. ROYAL OAK HOTEL (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS EMPLOYED BY THE RESPONDENT AT ITS ROYAL OAK HOTEL AT OAKVILLE, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

9712-64-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, (APPLICANT) V. BRAMPTON POULTRY, A DIVISION OF THE QUAKER OATS COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (134 EMPLOYEES IN THE UNIT).



HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FOUND THAT DAY DRIVERS, NIGHT DRIVERS, AND TWO NAMED EMPLOYEES ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND THAT ONE NAMED EMPLOYEE IS A NIGHT FOREMAN AND IS EXCLUDED FROM THE BARGAINING UNIT.

9713-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. SAVORY ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

9714-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. C. J. SPARKS ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

9717-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. BELMONT CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9719-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 949 (APPLICANT) v. GEORGE E. JOHNSTON & SONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF NORTH DUMFRIES AND IN THE TOWNSHIP OF WATERLOO SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9724-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (APPLICANT) v. ROGOL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING



NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF PARTIES).

9725-64-R: GENERAL TRUCK DRIVERS LOCAL 879 (APPLICANT) V. ZENITH ELECTRIC SUPPLY (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHERINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 456).

9726-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KAPUSKASING, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9733-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE FEDERAL BUILDING IN TIMMINS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD CAN SEE NO REASON AT THIS TIME FOR DEPARTING FROM ITS REGULAR AREA, ALTHOUGH THE BOARD INTENDS IN THE FUTURE TO RE-EXAMINE THE RADIUS CONCEPT IN DESCRIBING AN AREA."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOLLOWING THE ISSUANCE OF THE BOARD'S DECISION IN THIS MATTER, A REPLY WAS RECEIVED BY THE REGISTRAR. UNDER SECTION 70 OF THE BOARD'S RULES OF PROCEDURE, A RESPONDENT IS REQUIRED TO FILE ITS REPLY NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION. A REPLY MAILED REGISTERED MAIL ON THE TERMINAL DATE IS TREATED AS HAVING BEEN FILED ON THE TERMINAL DATE (SEE SECTION 52 OF THE BOARD'S RULES). THESE MATTERS ARE EXPLAINED IN FORM 56 WHICH IS SENT TO ALL RESPONDENTS. PARAGRAPH 8 OF THAT FORM PROVIDES:

8. IF YOU FAIL TO FILE A REPLY OR THE LIST OF EMPLOYEES AND DOCUMENTS CONTAINING SIGNATURES AS SET OUT ABOVE WITHIN THE TIME FIXED BY PARAGRAPH 5 OF THIS NOTICE OR IF YOUR REPLY IS INCOMPLETE, THE BOARD MAY PROCEED TO DISPOSE OF THE APPLICATION ON THE EVIDENCE AND REPRESENTATIONS BEFORE IT WITHOUT FURTHER NOTICE TO YOU AND WITHOUT A HEARING.

IN THE PRESENT CASE, THE TERMINAL DATE FOR THE APPLICATION WAS DECEMBER 9TH. THE REPLY WAS MAILED BY ORDINARY MAIL ON DECEMBER 14. NO REPLY HAVING BEEN RECEIVED WITHIN THE TIME FIXED BY THE RULES AND THERE BEING NO REQUEST FOR AN EXTENSION OF TIME, THE BOARD PROCEEDED TO DISPOSE OF THE APPLICATION ON THE BASIS OF THE EVIDENCE BEFORE IT AT THAT TIME. THE RESPONDENT HAD FILED WITH THE BOARD, BEFORE THE TERMINAL DATE, WHAT APPEARED TO BE A LIST CONTAINING THE SIGNATURES OF TWO PERSONS IN THE BARGAINING UNIT. THERE WAS NO INDICATION THAT A REPLY OR OTHER SIGNATURES WERE TO BE FILED. ACCORDINGLY, THE BOARD'S DECISION WAS TELEGRAPHED TO THE PARTIES ON DECEMBER 10 AND MAILED TO THE PARTIES ON DECEMBER 11. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

IN THE CIRCUMSTANCES, THE REGISTRAR IS DIRECTED TO RETURN THE REPLY AND ACCOMPANYING MATERIALS TO THE RESPONDENT.

AS HAS BEEN POINTED OUT IN A NUMBER OF CASES, IF ANY PARTY BELIEVES THE BOARD HAS ERRED IN SOME MATERIAL RESPECT, IT IS ALWAYS OPEN TO THAT PARTY TO ASK FOR RECONSIDERATION OF THE DECISION UNDER SECTION 79(1) OF THE LABOUR RELATIONS ACT."

9734-64-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN SARNIA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

9736-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BLACKSTONE INDUSTRIAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (186 EMPLOYEES IN THE UNIT).

9738-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. BESTWAY ELECTRICAL CONTRACTORS CO. (DOWNSVIEW) LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

9739-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. PEOPLE'S ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY

THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9740-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. K. N. RUMBLE ELECTRICAL CONTRACTORS (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9744-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. CARLETON INSULATING CO. REG'D (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9749-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. CEDARBRAE ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET, ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9751-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. DOLGAY ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).



9752-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. GEROW ELECTRICAL SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

9753-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 700 (APPLICANT) V. DAY & CAMPBELL LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN HAMILTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

9755-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MCCOY CONSTRUCTION (HAMILTON) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9756-64-R: OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION OF UNITED STATES AND CANADA LOCAL #70 SUDBURY ONTARIO (APPLICANT) V. B. ROY PLASTERING, LATHING & STUCCO (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT THE CITY OF SUDBURY AND WITHIN A RADIUS OF THIRTY MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

IN THIS APPLICATION THE BOARD SAW NO REASON TO DEPART FROM THE ESTABLISHED SUDBURY AREA.

9758-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KINGSWAY CEMENT FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EAST-ERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9759-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. DELTA ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE



RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSON ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9764-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. HENRY TALIK ELECTRIC COMPANY LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSON ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9765-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. SLOUGH CONSTRUCTION AND PROPERTIES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

9768-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 837 (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

9770-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204, AFL CIO CLC (APPLICANT) V. COMMERCIAL PROPERTY SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 92 KING STREET EAST, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 13TH, 1964, IN WHICH THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT." (6 EMPLOYEES IN THE UNIT).

9773-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (APPLICANT) V. CORRECT ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE

RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9777-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #597 (APPLICANT) V. DORAL HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ALTHOUGH THE RESPONDENT HAS REQUESTED A HEARING, NO REASONS HAVE BEEN ADVANCED IN SUPPORT THEREOF (CF. SECTION 75 OF THE BOARD'S RULES OF PROCEDURE). THE BOARD WILL NORMALLY PUT A CASE ON FOR HEARING WHERE ANY PARTY HAS A MATERIAL POINT TO BE ARGUED BEFORE THE BOARD. IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD CAN SEE NO REASON FOR GRANTING A HEARING."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE AREA PROPOSED BY THE APPLICANT DIFFERS FROM THE ESTABLISHED BOARD AREA. ALTHOUGH THIS ESTABLISHED AREA DOES NOT REPRESENT THE FINAL THINKING OF THE BOARD IN THIS MATTER, WE ARE NOT PREPARED TO DEPART THEREFROM AT THIS TIME."

9778-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WARREN TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

9784-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA (APPLICANT) V. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9785-64-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. F. W. SAWATZKY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CARPENTERS, CARPENTERS' APPRENTICES, AND

OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT LOCAL 1669 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA HAS THE BARGAINING RIGHTS FOR CARPENTERS AND CARPENTERS' APPRENTICES IN THE DISTRICT OF KENORA."

9786-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SILVERFIELDS MINING CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MINE IN THE TOWNSHIP OF COLEMAN, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, PERSONS EMPLOYED IN THE ENGINEERING AND GEOLOGICAL DEPARTMENTS, LABORATORY STAFF, CHEMISTS, ASSISTANT CHEMISTS, SECURITY GUARDS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIODS." (35 EMPLOYEES IN THE UNIT).

9788-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. ALLIED WEAVING (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, REGISTERED NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (61 EMPLOYEES IN THE UNIT).

9789-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. J. E. RUMBALL LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (12 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE DOCUMENTS FILED BY THE INTERVENER AS EVIDENCE OF MEMBERSHIP ON BEHALF OF CERTAIN EMPLOYEES OF THE RESPONDENT IS DEFECTIVE IN THAT IT DOES NOT MEET THE BOARD'S REQUIREMENTS TO ESTABLISH THAT THE EMPLOYEES HAVE BEEN ACCEPTED INTO MEMBERSHIP BY THE INTERVENER AND CANNOT BE CLASSIFIED AS APPLICATION FOR MEMBERSHIP CARDS.

THE BOARD THEREFORE FINDS THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION FOR CERTIFICATION OF THE INTERVENER IS THEREFORE DISMISSED."



9799-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
(APPLICANT) V. DOWNTOWN ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9803-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
(APPLICANT) V. BEAVER ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9808-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 681, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY  
(APPLICANT) V. IVEY-DREGER CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF OAKVILLE, (FORMERLY TRAFALGAR TOWNSHIP) NOT FALLING WITHIN A RADIUS OF TWENTY-FIVE MILES FROM TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE JOB SITE ON WHICH THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING IS OUTSIDE THE REGULAR METROPOLITAN TORONTO AREA OF A TWENTY-FIVE MILE RADIUS FROM TORONTO CITY HALL WHICH AREA INCLUDES A PART OF BUT NOT ALL OF OAKVILLE. THE SITE IN QUESTION IS WITHIN THAT PART OF OAKVILLE NOT FALLING WITHIN THE SAID TWENTY-FIVE MILE RADIUS.

THE APPLICANT HAS BARGAINING RIGHTS FOR THE RESPONDENT'S EMPLOYEES IN THE REGULAR METROPOLITAN TORONTO AREA AND THEREFORE PROPOSES AN AREA BORDERING THE TWENTY-FIVE MILE RADIUS FROM TORONTO CITY HALL. THIS IS NOT A REGULAR BOARD AREA.

AREAS DEFINED IN TERMS OF A RADIUS ARE FAR FROM SATISFACTORY, AND WE ARE OF THE OPINION THAT THE REGULAR METROPOLITAN TORONTO AREA REQUIRES A RE-DEFINITION AND PERHAPS ENLARGEMENT. HOWEVER, SINCE THIS IS A MATTER WHICH AFFECTS MANY UNIONS AND EMPLOYERS IN THE CONSTRUCTION INDUSTRY, WE ARE NOT PREPARED TO TAKE SUCH A STEP



WITHOUT GIVING INTERESTED PERSONS AN OPPORTUNITY TO MAKE REPRESENTATIONS ON THIS MATTER."

9810-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. MURRAY ELECTRICAL CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9815-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. AMPERE ELECTRIC (A DIVISION OF EDKO ELECTRIC LIMITED) (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO REPRESENTATIONS OF THE PARTIES).

9816-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. RAYMOND ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9504-64-R: AMALGAMATED TRANSIT UNION, DIVISION 1415, WINDSOR, ONTARIO (APPLICANT) V. SKINNER SCHOOL BUS LINES (ST. THOMAS) LIMITED (RESPONDENT).

IN THIS APPLICATION THE BOARD DETERMINED THAT TWO BARGAINING UNITS WERE APPROPRIATE.

WITH RESPECT TO UNIT No. 1, CERTIFICATION WAS GRANTED TO THE APPLICANT

WITHOUT A REPRESENTATION VOTE;

UNIT No. 1:

"ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF WINDSOR, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT A NAMED EMPLOYEE IS INCLUDED IN THE BARGAINING UNIT.

WITH RESPECT TO UNIT No. 2, CERTIFICATION WAS GRANTED TO THE APPLICANT AFTER A REPRESENTATION VOTE.

UNIT No. 2:

"ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF WINDSOR WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	10
NUMBER OF BALLOTS CAST	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

(SEE INDEXED ENDORSEMENT PAGE 441 ).

9521-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)  
V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN SAULT STE. MARIE, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (93 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEES EMPLOYED AT THE RESPONDENT'S RETAIL STORES IN THE TOWNSHIPS OF KORAH AND TARENTORUS ARE INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES ON VOTERS' LIST	93
NUMBER OF BALLOTS CAST	93
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	86
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. I WOULD NOT HAVE INCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE BARGAINING UNIT."

9593-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ARVIN-STANDARD LIMITED (RESPONDENT).

- AND -

9595-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. ARVIN-STANDARD LIMITED (RESPONDENT) v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SALTFLILET TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTER'S LIST		41
NUMBER OF BALLOTS CAST	41	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL ASSOCIATION OF MACHINISTS	16	

9635-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T.C.W. & H. OF A. (APPLICANT) v. CANADA BUILDING MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL GARAGE AND MAINTENANCE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, WATCHMEN AND OFFICE STAFF." (67 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST		67
NUMBER OF BALLOTS CAST	67	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	58	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

9637-64-R: INTERNATIONAL CHEMICAL WORKERS UNION AFL CIO CLC (APPLICANT) v. DRUGGISTS' CORPORATION LIMITED (RESPONDENT) v. DISTRICT 50, U.M.W.A. (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, LABORATORY AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST  
NUMBER OF BALLOTS CAST  
NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT  
NUMBER OF BALLOTS MARKED IN FAVOUR  
OF DISTRICT 50, UNITED MINE WORKERS  
OF AMERICA ON BEHALF OF LOCAL 14230

39  
38

35

3

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

9488-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (MILLWRIGHT SECTION) (APPLICANT) v. DUPONT OF CANADA, LIMITED KINGSTON WORKS TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (19 EMPLOYEES).

- AND -

9489-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 249 (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (CARPENTERS, WORKS ENGINEERING AND MINOR CONSTRUCTION DEPARTMENTS, KINGSTON WORKS). (4 EMPLOYEES).

- AND -

9490-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 115 (APPLICANT) v. DU PONT OF CANADA LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER).

- AND -

9491-64-R: INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER) (9 EMPLOYEES).

- AND -

9492-64-R: LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. DU PONT OF CANADA LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (INTERVENER). (41 EMPLOYEES).

- AND -

9493-64-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 114 (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (9 EMPLOYEES).

- AND -

9494-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (147 EMPLOYEES).



IN THE ABOVE SEVEN APPLICATIONS THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR REASONS TO BE GIVEN IN WRITING, THIS APPLICATION IS DISMISSED."

IN THE ABOVE SEVEN APPLICATIONS BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID

"FOR REASONS TO BE GIVEN IN WRITING, I DISSENT. I WOULD HAVE FOUND THAT THIS APPLICATION FALLS WITHIN THE MANDATORY PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT."

9604-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN KIRKLAND LAKE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 447).

9645-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, (APPLICANT) V. McNAMARA CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT) (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN THE O.J. GAFFNEY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1964, PAGE 233 THE BOARD SAID "IT HAS BEEN THE PRACTICE OF THE BOARD IN CASES WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION." IN THE PRESENT CASE ON THE EVIDENCE BEFORE US, WE FIND THAT J.F. MACINNIS WORKED MORE THAN FIFTY PER CENT OF HIS TIME AS A LABOURER. ACCORDINGLY, THE BOARD FINDS THAT J.F. MACINNIS WOULD NOT BE INCLUDED IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE IN THIS CASE.

THE BOARD FURTHER FINDS THAT THERE IS ONLY ONE EMPLOYEE IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE IN THE PRESENT CASE AND HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS DISMISSED."

9669-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO: CLC (APPLICANT) TECUMSEH SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TECUMSEH ENGAGED IN CARETAKING AND MAINTENANCE, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD IS NOT SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED

IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

9673-64-R: GILLIES BROS. EMPLOYEES' ASSOCIATION (APPLICANT) V. GILLIES BROS. & CO. LIMITED (RESPONDENT). (176 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WHILE THE APPLICANT, GILLIES BROS. EMPLOYEES' ASSOCIATION, HAS FILED FORM 8, STATEMENT ON STATUS OF TRADE UNION OVER THE SIGNATURE OF MR. BOURKE, THE PRESIDENT OF THE APPLICANT, BECAUSE THE APPLICANT WAS BEFORE THE BOARD IN THIS CASE FOR THE FIRST TIME, THE APPLICANT WAS REQUIRED TO FORMALLY PROVE ITS STATUS AS A TRADE UNION.

MR. BOURKE, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT THE FOLLOWING EVENTS LED TO THE FORMATION OF THE APPLICANT. A PETITION WAS CIRCULATED THROUGH THE PLANT BY EMPLOYEES IN FEBRUARY, 1964, WHEREIN THE COMPANY WAS REQUESTED TO GRANT A WAGE INCREASE. WHEN THIS PETITION WAS COMPLETED THE PRESIDENT OF THE RESPONDENT CALLED IN A GROUP OF EMPLOYEES TO DISCUSS THE MATTER AND AT THAT TIME THE EMPLOYEES ASKED THE PRESIDENT OF THE RESPONDENT WHETHER THE RESPONDENT WOULD HAVE ANY OBJECTION TO THE EMPLOYEES FORMING AN ASSOCIATION. THE WITNESS TESTIFIED THAT WHILE THE RESPONDENT "DIDN'T SEEM TO ENCOURAGE" THE FORMATION OF AN ASSOCIATION, SINCE THEY DIDN'T RECEIVE THE RAISE THEY EXPECTED, THE EMPLOYEES DECIDED THAT THEY SHOULD HAVE AN ASSOCIATION.

SUBSEQUENTLY, IN MAY, 1964, A MEETING WAS HELD ON A SATURDAY MORNING AT THE RESPONDENT'S PLANT. MR. BOURKE OBTAINED PERMISSION FROM THE MILL SUPERINTENDENT TO HOLD THIS MEETING. MR. BOURKE TESTIFIED THAT HE TOLD THE MILL SUPERINTENDENT THAT SOME EMPLOYEES WERE INTERESTED IN FORMING AN EMPLOYEES' ASSOCIATION AND HE WANTED PERMISSION TO TALK THE MATTER OVER WITH THE REST OF THE EMPLOYEES. THE MILL SUPERINTENDENT GRANTED PERMISSION TO HOLD A MEETING IN THE PLANT FOR THIS PURPOSE.

APPROXIMATELY 110 EMPLOYEES WERE PRESENT AT THE MEETING WHICH WAS HELD AND MR. GILLIES, THE PRESIDENT OF THE RESPONDENT, ADDRESSED THE MEETING. MR. GILLIES ADVISED THE EMPLOYEES "TO GO SLOWLY AND OBTAIN LEGAL COUNSEL". MR. GILLIES FURTHER ADVISED THE EMPLOYEES TO APPOINT THEMSELVES AN EXECUTIVE COMMITTEE. FINALLY MR. GILLIES SAID THAT THIS WAS THE LAST TIME HE COULD SPEAK TO THE EMPLOYEES WITH RESPECT TO THE FORMATION OF THE ASSOCIATION AND FURTHER ADVISED THE EMPLOYEES THAT THEY COULD NOT HOLD FURTHER MEETINGS ON PLANT PROPERTY UNLESS A FEE WAS PAID FOR THE USE OF THE PREMISES. MR. GILLIES SUGGESTED A MINIMUM CHARGE FOR USE OF THE PLANT FOR FURTHER MEETINGS, BUT NO CHARGE WAS MADE FOR THIS INITIAL MEETING.

FOLLOWING THIS MEETING IN MAY, 1964, THE EMPLOYEES CONTACTED THE SOLICITOR WHO REPRESENTED THE EMPLOYEES' ASSOCIATION AT THE HEARING AND A MEETING WAS CALLED FOR OCTOBER 2ND, 1964. A NOTICE OF THIS MEETING WAS PREPARED BY THE SOLICITOR FOR THE EMPLOYEES AND MR. BOURKE TOOK COPIES OF THE NOTICE TO THE MILL SUPERINTENDENT AND AFTER SHOWING THE NOTICE TO HIM, OBTAINED PERMISSION FROM HIM TO

POST 5 COPIES OF THE NOTICE THROUGHOUT THE PLANT.

THE NOTICE CALLING THE MEETING OF OCTOBER 2ND, 1964, READS AS FOLLOWS:-

"NOTICE

TAKE NOTICE THAT AN ORGANIZATIONAL MEETING OF THE EMPLOYEES OF GILLIES BROS. & Co. LIMITED WILL TAKE PLACE AT THE ORANGE HALL, AT BRAESIDE, ON FRIDAY, THE 2ND DAY OF OCTOBER, 1964 AT 7:15 P.M.

THE PURPOSE OF THE MEETING IS TO PASS THE CONSTITUTION OF THE ASSOCIATION, TO APPOINT OFFICERS AND A BARGAINING COMMITTEE OF THE ASSOCIATION COMPRISING MEMBERS OF THE VARIOUS DEPARTMENTS FOR THE PURPOSE OF ENTERING INTO NEGOTIATIONS WITH MANAGEMENT WITH RESPECT TO WAGES, VACATION WITH PAY, STATUTORY HOLIDAYS, OVERTIME AND SUCH OTHER MATTERS AS MAY BE BROUGHT BEFORE THE MEETING."

THE MEETING WAS HELD PURSUANT TO THE NOTICE AND WAS ATTENDED BY APPROXIMATELY 118 EMPLOYEES OF THE RESPONDENT. AT THIS MEETING A PROPOSED CONSTITUTION WAS SUBMITTED AND DISCUSSED AND AFTER AN AMENDMENT HAD BEEN MADE THE CONSTITUTION WAS UNANIMOUSLY ADOPTED BY THE MEETING. THE OFFICERS OF THE ASSOCIATION WERE THEN ELECTED AND THE CONSTITUTION WAS THEN SIGNED BY ALL OF THE APPLICANT'S OFFICERS.

AT THE HEARING MR. MUIRHEAD STATED ON BEHALF OF THE RESPONDENT THAT WHILE HE HAD KNOWLEDGE THAT THE EMPLOYEES' ASSOCIATION WAS BEING FORMED "I DIDN'T THINK THE ASSOCIATION WAS GOING TO BE CERTIFIED WHEN I FIRST HEARD ABOUT IT I THOUGHT IT WOULD BE AN INFORMAL ASSOCIATION."

HAVING REGARD TO ALL THE EVIDENCE AND ESPECIALLY THE EVIDENCE CONCERNING THE FACT THAT MANAGEMENT WAS CONSULTED FROM THE OUTSET WITH RESPECT TO THE FORMATION OF THE APPLICANT ASSOCIATION, THE FACT THAT PERMISSION WAS GRANTED FOR THE USE OF THE PREMISES OF THE RESPONDENT WITHOUT CHARGE TO HOLD A MEETING OF EMPLOYEES WHICH IMMEDIATELY LED TO THE FORMATION OF THE APPLICANT, THE FACT THAT THE PRESIDENT OF THE RESPONDENT ADDRESSED THE MEETING LEADING TO THE APPLICANT'S FORMATION AND ADVISED THE EMPLOYEES CONCERNING THE FORMATION OF THE APPLICANT AND THE FACT THAT THE RESPONDENT SUPPORTED THE FORMATION OF THE APPLICANT BY GRANTING PERMISSION TO POST THE NOTICE CALLING THE MEETING OF OCTOBER 2ND, AT WHICH THE CONSTITUTION OF THE APPLICANT WAS ADOPTED, THE BOARD FINDS THAT THE RESPONDENT HAS PARTICIPATED IN THE FORMATION OF THE APPLICANT AND HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT.

THE BOARD THEREFORE FINDS, PURSUANT TO SECTION 10 OF THE LABOUR RELATIONS ACT, THAT IT SHOULD NOT CERTIFY THE APPLICANT AS BARGAINING AGENT FOR ANY OF THE EMPLOYEES OF THE RESPONDENT AND THIS APPLICATION IS ACCORDINGLY DISMISSED."

9697-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FINDLAY DAIRY LIMITED, ICE CREAM DIVISION (RESPONDENT). (8 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT, AT THE HEARING, FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, WHICH COLLECTIVE AGREEMENT PURPORTS TO COVER THE EMPLOYEES OF THE RESPONDENT DESCRIBED IN THE APPLICATION FOR CERTIFICATION IN THIS MATTER.

THE APPLICANT HAVING TAKEN THE POSITION THAT THE COLLECTIVE AGREEMENT COVERS THESE EMPLOYEES REQUESTED LEAVE TO WITHDRAW THIS APPLICATION.

THE SOLICITOR FOR THE GROUP OF EMPLOYEES REQUESTED THAT THE BOARD NOT PERMIT THE WITHDRAWAL OF THIS APPLICATION AND DIRECT THAT THE APPLICATION BE DISMISSED.

THE BOARD FOLLOWING ITS USUAL PRACTICE IN THIS MATTER ACCORDINGLY DIRECTS THAT THIS APPLICATION BE DISMISSED."

9720-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD EVIDENCE OF MEMBERSHIP AND FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE, THE APPLICATION IS THEREFORE DISMISSED."

9723-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION NO. 837 (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD EVIDENCE OF MEMBERSHIP WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE, THE APPLICATION IS THEREFORE DISMISSED."

9741-64-R: WHEATLEY MANUFACTURING LIMITED EMPLOYEES ASSOCIATION (APPLICANT) V. WHEATLEY MANUFACTURING LIMITED (RESPONDENT). (65 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 457 ).

9742-64-R: PRINTING SPECIALTIES & PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. METAL CLOSURES CANADA LIMITED (RESPONDENT) V. AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 (INTERVENER). (28 EMPLOYEES).



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AFTER THE PRESENTATION OF ALL THE EVIDENCE AND DURING THE COURSE OF THE APPLICANT'S ARGUMENT, IT HAVING BECOME APPARENT TO THE APPLICANT THAT ALL ITS MEMBERSHIP EVIDENCE WHICH WAS FILED IN THIS MATTER WAS DEFICIENT, THE APPLICANT REQUESTED THAT IT BE PERMITTED TO WITHDRAW ITS APPLICATION WITHOUT PREJUDICE TO ITS RIGHT TO RE-APPLY.

THE INTERVENER OPPOSED THE APPLICANT'S REQUEST AND ARGUED THAT THE APPLICATION BE DISMISSED.

THE BOARD, FOLLOWING ITS USUAL PRACTICE WHERE A REQUEST IS MADE FOR LEAVE TO WITHDRAW AN APPLICATION DURING A HEARING, DENIED THE APPLICANT'S REQUEST."

9760-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #249 (APPLICANT) V. ELROSE CONSTRUCTION COMPANY GENERAL CONTRACTORS (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE THE APPLICATION IS THEREFORE DISMISSED."

9761-64-R: SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFFILIATED WITH THE AFL-CIO C.L.C. (APPLICANT) V. HURON STEEL FABRICATORS (LONDON) LIMITED (RESPONDENT). (15 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 458 ).

9782-64-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 197 (APPLICANT) V. HOMESIDE HOUSE LIMITED (RESPONDENT). (11 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD'S RECORDS DISCLOSE THAT BY ITS CERTIFICATE, DATED THE 13TH DAY OF SEPTEMBER, 1961, THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL TAPMEN AND BEVERAGE ROOM WAITERS OF THE RESPONDENT AT HAMILTON. SEE BOARD FILE NO. 1481-61-R. THIS CERTIFICATE WOULD APPEAR TO COVER ALL EMPLOYEES AFFECTED BY THE PRESENT APPLICATION. IT WAS NOT SUGGESTED THAT THESE BARGAINING RIGHTS HAVE BEEN ABANDONED AND THERE IS NO EVIDENCE BEFORE THE BOARD TO SUPPORT SUCH A FINDING. THE APPLICANT ALREADY HOLDING BARGAINING RIGHTS FOR THE EMPLOYEES IN QUESTION, THE PRESENT APPLICATION IS ACCORDINGLY DISMISSED."

9783-64-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 197, HAMILTON ONTARIO (APPLICANT) V. HOMESIDE HOUSE LIMITED (RESPONDENT). (11 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD'S RECORDS DISCLOSE THAT BY ITS CERTIFICATE, DATED THE 13TH DAY OF SEPTEMBER 1961, THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL TAPMEN AND BEVERAGE ROOM WAITERS OF THE RESPONDENT AT HAMILTON. SEE BOARD FILE NO. 1481-61-R. THIS CERTIFICATE WOULD APPEAR TO COVER ALL EMPLOYEES AFFECTED BY THE PRESENT APPLICATION. IT WAS NOT SUGGESTED THAT THESE BARGAINING RIGHTS HAVE BEEN ABANDONED AND THERE IS NO EVIDENCE BEFORE THE BOARD TO SUPPORT SUCH A FINDING. THE APPLICANT ALREADY HOLDING BARGAINING RIGHTS FOR THE EMPLOYEES IN QUESTION, THE PRESENT APPLICATION IS ACCORDINGLY DISMISSED."

DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

9544-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT) v. UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL 433 (INTERVENER) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE BOXBOARD MILLS POWER PLANT DEPARTMENTS OF ITS GAIR PAPER PRODUCTS DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF POWER ENGINEER, ANY FOREMAN HAVING DIRECT RESPONSIBILITY TO THE MANAGEMENT FOR THE OPERATION OF A POWER PLANT DEPARTMENT, WATCHMAN, TECHNICAL CONTROL MAN, ANY EMPLOYEE ENGAGED IN ADMINISTRATION, SALES, ACCOUNTING, CLERICAL, STENOGRAPHIC AND ANY OTHER OFFICE WORK, NEW EMPLOYEES FOR THE FIRST 30 CALENDAR DAYS OF EMPLOYMENT IN THE MILLS, TEMPORARY HIRED FOR VACATION RELIEF OR FOR SHORT PERIODS OF THREE MONTHS OR LESS AND EMPLOYEES HIRED FOR CONSTRUCTION AND RENOVATION PROJECTS."

NUMBER OF NAMES ON REVISED VOTERS' LIST	20
NUMBER OF BALLOTS CAST	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796	12

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

8733-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FRANK DOERNER & SONS LIMITED (RESPONDENT) v. FRANK DOERNER & SONS LIMITED EMPLOYEES ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSON ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

(THE BOARD NOTES THAT THE APPLICANT HAS WITHDRAWN ITS OBJECTION TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER AND PARTICULARLY THAT THE APPLICANT AGREES THAT ONE NAMED EMPLOYEE SHOULD NOT BE INCLUDED ON SUCH LIST.)

NUMBER OF NAMES ON REVISED VOTERS' LIST	51
NUMBER OF BALLOTS CAST	51
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

45

ON OCTOBER 28, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE REASONS GIVEN ORALLY AT THE HEARING IN THIS MATTER THE BOARD FINDS PURSUANT TO SECTION 10 OF THE LABOUR RELATIONS ACT THAT BECAUSE OF THE PARTICIPATION OF THE RESPONDENT IN THE FORMATION OF THE INTERVENER, THE INTERVENER IS NOT A TRADE UNION WHICH IS ENTITLED TO BE CERTIFIED BY THE BOARD.

THE APPLICATION FOR CERTIFICATION OF THE INTERVENER IN THIS MATTER IS ACCORDINGLY DISMISSED."

9315-64-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS RETAIL STORES IN SARNIA TOWNSHIP, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST

57

NUMBER OF BALLOTS CAST

54

NUMBER OF BALLOTS SEGREGATED AND  
NOT COUNTED

2

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

25

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

27

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT MORRIS BERG, RUBY GRIFFIN, HAROLD PREST AND MICHAEL STEEL DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT JOHN WARD AND THOMAS WINTER ARE NOT EMPLOYED AS SECURITY GUARDS WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER H.F. IRWIN SAID:-

"I CONCUR WITH ALL THE FINDINGS OF THE MAJORITY WITH THE EXCEPTION OF THE FINDING WITH RESPECT TO RUBY GRIFFIN. ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED OCTOBER 14TH, 1964, I WOULD FIND THAT RUBY GRIFFIN EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE BOARD BY AN ENDORSEMENT DATED OCTOBER 29TH, 1964 DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER. THE VOTE WAS HELD ON NOVEMBER 25TH, 1964. SUBSEQUENT TO THE TAKING OF THE VOTE THE APPLICANT FILED WITH THE BOARD ALLEGATIONS WITH RESPECT TO THE CONDUCT OF THE RESPONDENT, PRIOR TO AND DURING THE TAKING OF THE REPRESENTATION VOTE. THE APPLICANT SUBMITS THAT AS A RESULT OF THE ALLEGED MISCONDUCT THE BOARD SHOULD SET ASIDE THE VOTE AND GRANT THE APPLICANT OUTRIGHT CERTIFICATION.

THE APPLICANT ADDUCED THE FOLLOWING EVIDENCE IN SUPPORT OF ITS ALLEGATIONS. GILLES LOZIER WHO IS EMPLOYED BY THE RESPONDENT AS A STOCK BOY IN THE MEN'S WEAR DEPARTMENT IDENTIFIED A MIMEOGRAPHED DOCUMENT DATED NOVEMBER 20TH, WHICH WAS FILED WITH THE BOARD AS EXHIBIT #1. THE HEADING ON THE DOCUMENT READS "FELLOW SENTRY EMPLOYEES". THE LAST SENTENCE READS "THIS LETTER PRINTED AND DISTRIBUTED BY YOUR DON'T VOTE COMMITTEE". THE DOCUMENT READS IN PART:

IF A MAJORITY OF US DON'T VOTE IN THE ELECTION,  
IT WILL COUNT AS VOTES AGAINST THE MINERS' UNION  
AND IT WILL BE IMPOSSIBLE FOR LASENBY AND HER  
MINERS' UNION TO WIN.

WE INTEND TO SHOW OUR DISAPPROVAL OF THESE PEOPLE  
AND THEIR TACTICS BY NOT VOTING AT ALL DURING THE  
ELECTION.

WE ARE ASKING ALL EMPLOYEES WHO DO NOT WANT JUNE  
LASENBY AND HER MINERS' UNION CONTROLLING THEM  
TO JOIN US IN OUR CAMPAIGN. THEN WE'LL SEE WHO  
VOTES. THE ONLY PEOPLE THAT WILL VOTE WILL BE  
THOSE WHO WANT MORE DISRUPTION WITH HER AND HER  
DISTRICT 50 MINERS' UNION.

DON'T BE THEIR GOAT - DON'T VOTE.

LOZIER TESTIFIED THAT EXHIBIT #1 WAS HANDED TO HIM BY A FELLOW EMPLOYEE ON NOVEMBER 20TH IN THE STORE DURING WORKING HOURS.

JAMES DENNIS WHO IS AN EMPLOYEE IN THE LADIES' WEAR DEPARTMENT IDENTIFIED A LETTER DATED NOVEMBER 20TH, 1964 WHICH WAS FILED WITH THE BOARD AS EXHIBIT #2. THE LETTER IS PRINTED ON THE STATIONERY OF SENTRY DEPARTMENT STORES LIMITED, AND THE NAME "S.J. LIPSON, PRESIDENT" APPEARS IN PRINT AT THE CONCLUSION OF THE LETTER. DENNIS TESTIFIED THAT HE RECEIVED THE LETTER IN AN UNPOSTMARKED SENTRY DEPARTMENT STORE LIMITED ENVELOPE WHICH WAS ADDRESSED TO HIM AT HIS HOME AT 1437 EXMOUTH STREET, SARNIA. (THE ENVELOPE WAS ALSO FILED AS PART OF EXHIBIT #2). DENNIS' EVIDENCE IS THAT HE FIRST SAW THE LETTER ON THE MONDAY MORNING OF NOVEMBER 23RD WHEN HE FOUND IT IN HIS POST BOX. HE SAID THAT THE LAST PREVIOUS TIME HE HAD LOOKED IN HIS POST BOX WAS IN THE EARLY AFTERNOON OF NOVEMBER 21ST.

DENNIS TESTIFIED THAT HE HAD ACTED AS A SCRUTINEER FOR THE APPLICANT DURING THE TAKING OF THE REPRESENTATION VOTE ON NOVEMBER 25TH, 1964. HIS EVIDENCE IS THAT THE SCHEDULED VOTING HOURS WERE FROM 5:30 TO 6:30 P.M. ON THE ABOVE DATE, BUT THAT THE POLL, IN FACT, DID NOT CLOSE UNTIL 6:45 P.M.



DENNIS STATED THAT SOME TIME TOWARDS 6:30 P.M. THE RETURNING OFFICER OF THE BOARD ASKED TO SEE MR. LESLIE WYNICK, THE STORE MANAGER. WYNICK APPEARED IN THE POLLING STATION IMMEDIATELY THEREAFTER. THE RETURNING OFFICER GAVE TO WYNICK A LIST CONTAINING THE NAME OF A NUMBER OF EMPLOYEES WHO THE RETURNING OFFICER SAID HAD NOT YET CAST BALLOTS. WYNICK THEREUPON LEFT THE POLLING STATION AND TOOK THE LIST WITH HIM. DENNIS SAID THAT HE DID NOT MAKE ANY OBJECTION TO THE ACTION OF THE RETURNING OFFICER UNTIL AFTER WYNICK HAD LEFT THE POLLING STATION. SUBSEQUENTLY, AT SOME TIME BETWEEN 6:30 P.M. AND 6:45 P.M. THREE EMPLOYEES CAME TO THE POLLING STATION AND CAST BALLOTS. WYNICK RETURNED TO THE POLLING STATION AND INFORMED THE RETURNING OFFICER THAT THE REST OF THE EMPLOYEES ON THE LIST WERE NOT IN THE STORE OR WERE ABSENT BY REASON OF ILLNESS.

WYNICK TESTIFIED THAT ON NOVEMBER 20TH HE HAD FOUND A PILE OF THE DOCUMENTS (FILED AS EXHIBIT #1) IN THE STORE OFFICE AND THAT HE HAD IMMEDIATELY CONFISCATED THEM. HE SAID THAT HE KNEW THAT SOME OF THESE DOCUMENTS HAD BEEN CIRCULATED IN THE STORE. HE HAD NO PERSONAL KNOWLEDGE, HOWEVER, AS TO WHO HAD PRINTED THE DOCUMENTS OR HOW THEY CAME TO BE IN THE OFFICE. HE TESTIFIED, HOWEVER, THAT HE COULD TELL BY THE TYPE OF PRINT THAT THE DOCUMENTS HAD NOT BEEN PRODUCED ON THE OFFICE MIMEOGRAPH MACHINE.

WYNICK ALSO TESTIFIED THAT LETTERS OF THE TYPE FILED AS EXHIBIT #2 HAD BEEN PRINTED IN THE OFFICE BY MR. BIGHAM, THE ASSISTANT STORE MANAGER. WYNICK SAID THAT THE LETTERS WERE ADDRESSED TO EACH EMPLOYEE AT HIS OR HER HOME ADDRESS AND WERE DELIVERED TO THE HOME ADDRESS OF EACH EMPLOYEE BY THREE DEPARTMENT MANAGERS IN THE EMPLOY OF THE RESPONDENT. THE DELIVERY OF THE LETTERS WAS MADE BETWEEN 6:00 P.M. AND 7:00 P.M. ON SATURDAY, NOVEMBER 21ST.

WYNICK'S TESTIMONY RELATING TO HIS APPEARANCE AT THE POLLING STATION DURING THE TAKING OF THE VOTE CORRESPONDS WITH THE EVIDENCE OF DENNIS. AFTER LEAVING THE POLLING STATION WYNICK'S EVIDENCE IS THAT HE TOLD ONE EMPLOYEE WHOSE NAME WAS ON THE LIST THAT HE AND SOME OF THE OTHER EMPLOYEES HAD NOT CAST BALLOTS. HE DID NOT SPEAK TO ANY OTHER EMPLOYEE WHOSE NAME APPEARED ON THE LIST.

THE ABSENCE OF THE NAMES AND ADDRESSES OF THE PRINTERS AND PUBLISHER OF THE DOCUMENT FILED AS EXHIBIT #1 CLEARLY CONSTITUTES A VIOLATION OF SECTION 64 OF THE LABOUR RELATIONS ACT. WHILE A VIOLATION OF THIS SECTION MAY WELL FORM THE BASIS OF AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE PERSON OR PERSONS RESPONSIBLE FOR THE PRINTING AND PUBLISHING OF THE DOCUMENT, APART FROM OTHER CONSIDERATIONS, IT DOES CONSTITUTE GROUNDS UPON WHICH THE BOARD WOULD INVALIDATE THE RESULT OF THE REPRESENTATION VOTE.

THERE IS NO EVIDENCE THAT THE RESPONDENT WAS IN ANY WAY ASSOCIATED WITH OR LENT SUPPORT TO THE PUBLICATION OF EXHIBIT #1 OR TO SUGGEST THAT ANY OF THE EMPLOYEES WHO SAW EXHIBIT #1 WERE UNDER THE IMPRESSION THAT IT HAD THE SPONSORSHIP OF THE RESPONDENT. IN OUR OPINION, THE FACT THAT ONLY THREE OF THE FIFTY-SEVEN PERSONS WHO WERE ELIGIBLE TO VOTE FAILED TO CAST BALLOTS IS A CLEAR INDICATION THAT THE EMPLOYEES WERE NOT INTIMIDATED OR DETERRED FROM CASTING THEIR BALLOTS AS A RESULT OF THE PUBLICATION OF EXHIBIT #1. WHILE THE DANGER OF SUCH A DOCUMENT IS THAT IT MAY DESTROY THE SECRECY OF THE BALLOTING, IN LIGHT OF THE HEAVY BALLOTING AND THE RESULT,

IT IS APPARENT THAT THE SECRECY OF THE VOTE WAS IN NO WAY JEOPARDIZED, IN THE INSTANT CASE, BY THE PUBLICATION OF EXHIBIT #1.

IT WAS NEITHER ARGUED NOR DO WE FIND THAT THE CONTENTS OF THE LETTER FILED AS EXHIBIT #2 CONTRAVENED ANY PROVISION OF THE LABOUR RELATIONS ACT. FURTHER, THE EVIDENCE BEFORE US IS THAT ALL THE LETTERS WERE DELIVERED BY HAND TO THE HOME ADDRESS OF EACH EMPLOYEE BETWEEN 6:00 P.M. AND 7:00 P.M. ON NOVEMBER 21ST, SOME FIVE HOURS PRIOR TO THE COMING INTO EFFECT OF THE "QUIET" PERIOD AT MIDNIGHT ON NOVEMBER 21ST. SINCE THE LETTERS WERE CIRCULATED BY HAND, THE BOARD IS OF THE OPINION THAT THE EFFECTIVE DATE OF DELIVERY MUST BE TAKEN TO BE AT THE TIME THE LETTERS WERE DEPOSITED AT THE HOMES OF THE EMPLOYEES. ACCORDINGLY, WE FIND THAT THERE HAS BEEN NO VIOLATION OF THE "QUIET" PERIOD. WE WOULD ADD THAT HAD THE LETTERS BEEN SENT TO THE EMPLOYEES BY MAIL, DEPENDING ON ALL THE CIRCUMSTANCES, A DIFFERENT CONCLUSION MIGHT HAVE BEEN REACHED BY THE BOARD.

IN OUR OPINION, THE CONDUCT OF THE RETURNING OFFICER AND WYNICK DURING THE CONDUCT OF THE VOTE IN NO WAY WARRANTS CRITICISM. IT IS CLEAR FROM THE EVIDENCE THAT THE RETURNING OFFICER WAS ONLY ENDEAVOURING TO ENSURE THAT ALL PERSONS ELIGIBLE TO CAST BALLOTS WERE AWARE OF THEIR ENTITLEMENT TO DO SO. IN OUR VIEW, IT WAS PROPER AND LOGICAL FOR THE RETURNING OFFICER TO REQUEST THE MANAGER TO INFORM EMPLOYEES WHO HAD NOT CAST BALLOTS OF THEIR OPPORTUNITY TO DO SO. IN ADDITION, THE FACT THAT THE POLLING STATION REMAINED OPEN FOR FIFTEEN MINUTES PAST THE SCHEDULED HOUR AND THE FACT THAT BALLOTS WERE CAST DURING THAT TIME, IN OUR OPINION, DOES NOT CONSTITUTE AN IRREGULARITY IN THE CONDUCT OF THE VOTE THAT WOULD IMPUGN THE REPRESENTATION VOTE.

FOR THE ABOVE REASONS, THE OBJECTIONS OF THE APPLICANT TO THE REGULARITY OF THE REPRESENTATION VOTE ARE DISMISSED."

9465-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. TEESWATER CREAMERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TEESWATER AND MILD MAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, TERRITORIAL SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK."  
(65 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST		65
NUMBER OF BALLOTS CAST		64
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	37	

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THREE NAMED EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

9560-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ROCKWELL-STANDARD (TILBURY)

LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN TILBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES)

(AGREEMENT OF THE PARTIES)

NUMBER OF NAMES ON VOTERS' LIST	6
NUMBER OF BALLOTS CAST	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

9453-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) v. ALLIED WEAVING (CANADA) LIMITED (RESPONDENT). (41 EMPLOYEES).

9644-64-R: UNITED STEELWORKERS OF AMERICA, LOCAL 3505 (APPLICANT) v. N. SLATER COMPANY DIVISION OF SLATER STEEL INDUSTRIES LIMITED (RESPONDENT). (13 EMPLOYEES).

9721-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. MONTEITH-McGRATH LIMITED (RESPONDENT). (11 EMPLOYEES).

9728-64-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) v. TELFORD & CRADDOCK PRINTERS LTD. (RESPONDENT). (6 EMPLOYEES).

9762-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. NIAGARA STRUCTURAL STEEL (RESPONDENT). (13 EMPLOYEES).

9776-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC (APPLICANT) v. BELMONT HOTEL (RESPONDENT).

9787-64-R: REMINGTON RAND SERVICE EMPLOYEES' ASSOCIATION (APPLICANT) v. REMINGTON RAND LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS (INTERVENER) v. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS' AFL-CIO;CLC. AND ITS LOCAL 543 (INTERVENER). (16 EMPLOYEES).

9797-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 837 (APPLICANT) v. HURLEY GREGORIS CONSTRUCTION Co. (RESPONDENT) (8 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS  
DISPOSED OF DURING DECEMBER

9472-64-R: THOMAS M. FITZPATRICK (APPLICANT) v. LOCAL 450, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA WITH HEADQUARTERS IN HAWKINS COUNTY, TENNESSEE, U.S.A. (RESPONDENT) v. CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION) (INTERVENER). (GRANTED). (75 EMPLOYEES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	75
NUMBER OF BALLOTS CAST	75
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	73

(SEE INDEXED ENDORSEMENT PAGE 459 )

9485-64-R: DOUGLAS CAMPBELL (APPLICANT) V. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (RESPONDENT) V. WESLEY SPURRELL (INTERVENER). (GRANTED). (5 EMPLOYEES).

(RE: HOMEDALE I.G.A. FOODLINER AND TALBOT ST. I.G.A. FOODLINER, ST. THOMAS, ONTARIO).

NUMBER OF NAMES ON VOTERS' LIST	5
NUMBER OF BALLOTS CAST	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	5

9509-64-R: EMPLOYEES OF NEW METHOD LAUNDRY CO. LTD. (APPLICANT) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION-LOCAL 351 (RESPONDENT) V. NEW METHOD LAUNDRY COMPANY LIMITED (INTERVENER). (DISMISSED). (119 EMPLOYEES).

(RE: NEW METHOD LAUNDRY CO. LIMITED, TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

HAVING REGARD TO THE REQUIREMENTS OF THE BOARD, WE FIND THE EVIDENCE RELATING TO THE CIRCULATION OF THE TWO DOCUMENTS FILED IN SUPPORT OF THIS APPLICATION TO BE UNSATISFACTORY.

THE APPLICATION, ACCORDINGLY, IS DISMISSED."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

FOR THE REASONS GIVEN IN MY DISSENT IN THE REMINGTON RAND LIMITED (PAUL BRAFIELD) CASE, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, MARCH 1963, P.535, I AM OF THE OPINION THAT THE APPLICANT HAS MET THE REQUIREMENTS OF THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE AND REGULATIONS IN A PROCEEDING OF THIS KIND. ACCORDINGLY, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE."



9518-64-R: B. LUKAS (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. UNIVERSAL SECTIONS & MOULDINGS LTD. (INTERVENER). (GRANTED). (31 EMPLOYEES).

(RE: UNIVERSAL SECTIONS & MOULDINGS LTD.,  
SCARBOROUGH, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS' LIST	31
NUMBER OF BALLOTS CAST	31
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	8
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	23

9617-64-R: EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY (APPLICANT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 462 ).

9675-64-R: ROBERT KYLE (APPLICANT) V. LOCAL 757 INTERNATIONAL ASS. OF BRIDGE & STRUCTURAL IRON WORKERS UNION (RESPONDENT) V. LAMSON CONVEYORS OF CANADA LIMITED (INTERVENER). (GRANTED). (28 EMPLOYEES).

(RE: LAMSON CONVEYORS OF CANADA LIMITED,  
DON MILLS, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING APPLIED ON NOVEMBER 16TH, 1964 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED DECEMBER 4TH, 1964, THAT IT "DOES NOT DESIRE TO CONTINUE TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT OF LAMSON CONVEYORS OF CANADA LIMITED" THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS.

THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF LAMSON CONVEYORS OF CANADA LIMITED AT METROPOLITAN TORONTO, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

9730-64-R: SEVEN UP (SUDBURY) BOTTLING COMPANY LIMITED (APPLICANT) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT). (GRANTED). (4 EMPLOYEES).

(RE: SEVEN UP (SUDBURY) BOTTLING COMPANY LIMITED,  
SUDBURY, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 45 (2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT OF ALL EMPLOYEES OF THE APPLICANT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ROUTE SUPERVISORS AND OFFICE STAFF, ON THE 30TH DAY OF JANUARY, 1962.

THE APPLICANT AND THE RESPONDENT NEGOTIATED FOR A COLLECTIVE AGREEMENT DURING THE PERIOD FROM MARCH 9TH, 1962 TO JUNE 28TH, 1962 AND NO COLLECTIVE AGREEMENT WAS ENTERED INTO.

SUBSEQUENTLY, BY LETTER DATED MAY 9TH, 1963, THE RESPONDENT REQUESTED THAT NEGOTIATIONS BE RECOMMENCED. HOWEVER, NO NEGOTIATING MEETING WAS HELD FOLLOWING THIS REQUEST.

THE APPLICANT HAS HAD NO COMMUNICATION FROM THE RESPONDENT SINCE MAY 9TH, 1963, WHEREIN BARGAINING WAS REQUESTED. NO REQUEST WAS MADE BY EITHER PARTY FOR CONCILIATION SERVICES.

THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS ALLOWED A PERIOD OF MORE THAN 60 DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN FOLLOWING SERVICE OF A NOTICE TO BARGAIN UNDER SECTION 11 OF THE ACT.

THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF SEVEN UP (SUDBURY) BOTTLING COMPANY LIMITED AT SUDBURY, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

9750-64-R: GORDON BENN (APPLICANT) V. LOCAL 419 TEAMSTERS UNION, (RESPONDENT) V. DALTON CARTAGE CO. LTD. (INTERVENER). (DISMISSED). (7 EMPLOYEES).

(RE: DALTON CARTAGE COMPANY LIMITED,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING FAILED TO APPEAR AT THE HEARING IN THIS MATTER, THIS APPLICATION IS ACCORDINGLY DISMISSED."

9802-64-R: PEGGY WATSON AND OTHER EMPLOYEES OF FOOTWEAR FASHIONS LIMITED AT LONDON, ONTARIO (APPLICANT) V. UNITED SHOE WORKERS OF AMERICA (RESPONDENT) (GRANTED). (49 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT, UNDER SECTION 45 OF THE LABOUR RELATIONS ACT, AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED DECEMBER 28, 1964, THAT "WE ARE NO LONGER INTERESTED IN THIS CASE", THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF FOOTWEAR FASHIONS LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL  
DISPOSED OF DURING DECEMBER

9780-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) v. S. MASON ET AL (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"NOTICE OF THESE PROCEEDINGS NOT HAVING BEEN PROPERLY SERVED UPON EIGHT NAMED EMPLOYEES, THIS APPLICATION IS THEREFORE DISMISSED WITH RESPECT TO THESE EIGHT.

THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD WITH RESPECT TO FIVE OF THE RESPONDENTS NAMED IN THIS APPLICATION.

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE RESPONDENTS (74 NAMED PERSONS), ALL EMPLOYEES OF THE APPLICANT HAVE SINCE ON OR ABOUT THE 18TH DAY OF NOVEMBER, 1964 IN COMBINATION OR IN CONCERT AND IN ACCORDANCE WITH A COMMON UNDERSTANDING REFUSED TO WORK AND HAVE CONTINUED TO REFUSE TO WORK AND HAVE THEREBY ENGAGED IN A STRIKE AT THE ALGOMA STEEL PROJECT OF THE APPLICANT AT SAULT STE. MARIE.

THE BOARD FURTHER FINDS THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS OCCURRED DURING THE TERM OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 508 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA WHICH IS BINDING UPON THE RESPONDENTS.

THE BOARD THEREFORE DECLARES THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS IS AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT."

9781-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) v. LOCAL 508 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

9204-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) v. ALGER PRESS LIMITED AND STEWART ALGER (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 466 )

9722-64-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. PIONEER ELECTRIC EASTERN LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR AN OFFENCE ALLEGED TO HAVE BEEN COMMITTED IN VIOLATION OF SECTION 12 OF THE LABOUR RELATIONS ACT.

IN THE OPINION OF THE BOARD, THE APPLICANT HAS FAILED TO SATISFY

THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS AND THE APPLICATION IS ACCORDINGLY DISMISSED."

9779-64-U: LOCAL 173, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. DARE FOODS (BISCUIT DIVISION) LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED  
OF DURING DECEMBER

9281-64-U: UNITED GARMENT WORKERS OF AMERICA LOCAL UNION #253 (COMPLAINANT) V. MAC MOR SPORTSWEAR LTD. (RESPONDENT).

9296-64-U: UNITED GARMENT WORKERS OF AMERICA LOCAL UNION #253 (COMPLAINANT) V. MAC MOR SPORTSWEAR LTD. (RESPONDENT).

9538-64-U: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION (COMPLAINANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

9540-64-U: INTERNATIONAL UNION ELECTRICAL, RADIO AND MACHINE WORKERS (COMPLAINANT) V. R.H. NICHOL COMPANY LIMITED (RESPONDENT).

9547-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS, GEORGE CHRULENKO AND ERNEST BORRELLO, HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50(A) AND 52 OF THE LABOUR RELATIONS ACT.

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT GEORGE CHRULENKO WAS DISCHARGED BY THE RESPONDENT ON OCTOBER 13TH, 1964 IN CONTRAVENTION OF SECTION 50(A) OR SECTION 52 OF THE LABOUR RELATIONS ACT. THE COMPLAINT WITH RESPECT TO THE AGGRIEVED PERSON GEORGE CHRULENKO, ACCORDINGLY, IS DISMISSED.

HAVING REGARD TO THE SETTLEMENT AGREED TO BY THE COMPLAINANT AND THE RESPONDENT AT THE HEARING OF THE BOARD ON DECEMBER 4TH, 1964 WITH RESPECT TO THE AGGRIEVED PERSON ERNEST BORRELLO, THE COMPLAINT OF THE COMPLAINANT WITH RESPECT TO ERNEST BORRELLO IS WITHDRAWN BY LEAVE OF THE BOARD."

9556-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. JOANISSE LIMITED (RESPONDENT).

9606-64-U: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-



"HAVING REGARD TO THE SETTLEMENT AGREED TO BY THE COMPLAINANT AND THE RESPONDENT AT THE HEARING OF THE BOARD ON DECEMBER 4TH, 1964, THE COMPLAINT OF THE COMPLAINANT IS WITHDRAWN BY LEAVE OF THE BOARD."

9634-64-U: NEIL MCCALLISTER (COMPLAINANT) V. ESSDEE DELIVERY SERVICE (RESPONDENT)

9666-64-U: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (COMPLAINANT) V. TWIN CITY LAUNDRY LIMITED (RESPONDENT).

THE BOARD FOUND NO SUBSTANCE IN THE COMPLAINT THAT A NAMED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND ACCORDINGLY DISMISSED THE COMPLAINT.

9682-64-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. KROEHLER MANUFACTURING COMPANY LIMITED (RESPONDENT).

9718-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. I.G.A. FOODLINER (RESPONDENT).

9731-64-U: HERMAN LUKS (COMPLAINANT) V. LOCAL UNION 353 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND MR. HARDY AND MR. FARQUHAR (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 468 ).

9731-64-U: DISTRICT 50, U.M.W.A. REGION 75 ON BEHALF OF (MRS. JUNE LASENBY) (COMPLAINANT) V. SENTRY DEPARTMENT STORES LTD. (RESPONDENT).

9737-64-U: THE CANADIAN UNION OF OPERATING ENGINEERS, (COMPLAINANT) V. HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

9763-64-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946 (COMPLAINANT) V. GOLD-AIR RENTALS (RESPONDENT).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT DISPOSED OF DURING DECEMBER

9480-64-M: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. NEW METHOD LAUNDRY CO. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE REQUEST OF THE LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 AND THE CONSENT OF NEW METHOD LAUNDRY CO. LIMITED, THIS JOINT APPLICATION FOR EARLY TERMINATION OF THE COLLECTIVE AGREEMENT MADE AND ENTERED INTO BY THE PARTIES ON DECEMBER 1ST, 1962 IS WITHDRAWN BY LEAVE OF THE BOARD."

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER) DISPOSED OF DURING DECEMBER

9706-64-M: PATRICK MURPHY MEMBERSHIP NO. 1032666 ALTONA RD., R.R. 2 PICKERING ON (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 891 YONGE ST

TORONTO ONT.. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING NOTIFIED THE BOARD THAT HE HAS RECEIVED THE FINANCIAL STATEMENT WHICH HE REQUESTED FROM THE RESPONDENT, THIS PROCEEDING IS ACCORDINGLY TERMINATED."

APPLICATION UNDER SECTION 66 (REVIEW OF INTERIM ORDER OR DIRECTION OF JURISDICTIONAL DISPUTES COMMISSION) DISPOSED OF DURING DECEMBER

9636-64-M: BRAMPTON TYPOGRAPHICAL UNION No. 987, INTERNATIONAL TYPOGRAPHICAL UNION (COMPLAINANT) V. CHARTERS PUBLISHING COMPANY LIMITED AND BRAMPTON PRINTING PRESSMEN & ASSISTANTS' UNION No. 217 OF THE INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (RESPONDENTS).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE REQUEST OF COUNSEL FOR THE BRAMPTON TYPOGRAPHICAL UNION No. 987, INTERNATIONAL TYPOGRAPHICAL UNION, FOR AN ADJOURNMENT OF THE HEARING IN THIS CASE IS DENIED. THIS APPLICATION IS WITHDRAWN BY LEAVE OF THE BOARD."

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING DECEMBER

1498-61-M: THE ONTARIO HYDRO EMPLOYEES UNION, N.U.P.S.E.-C.L.C. (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING DECEMBER

9690-64-M: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL No. 880 (TRADE UNION) V. PETTAPIECE CARTAGE LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE TRADE UNION, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL No. 880, AND THE EMPLOYER, PETTAPIECE CARTAGE LIMITED.

AT THE HEARING HELD IN THIS MATTER, MR. MURRAY, FOR THE EMPLOYER, TOOK THE POSITION THAT THE BOARD WAS WITHOUT JURISDICTION IN AS MUCH AS THE NATURE OF THE EMPLOYER'S OPERATIONS WAS SUCH AS TO BRING IT EXCLUSIVELY WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. MR. MURRAY RELIED ON THE CASE OF RE TANK TRUCK TRANSPORT LIMITED, (1960) 25 D.L.R., (2ND) 161 AFF'D, (1963) 36 D.L.R., (2ND) 636 (C.A.).

THE REPRESENTATIVES OF THE PARTIES AGREED THAT THE COMPANY IS LICENSED TO TRANSPORT GOODS OUTSIDE THE PROVINCE OF ONTARIO AND IN INTERNATIONAL TRADE, AND THAT SUCH EXTRA-

PROVINCIAL BUSINESS ACCOUNTS FOR SOME 25 TO 30 PER CENT OF THE COMPANY'S REVENUE AND IS BUSINESS CARRIED ON AS PART OF THE COMPANY'S REGULAR OPERATIONS.

IT WAS FURTHER AGREED THAT THE OPERATIONS OF THE EMPLOYER CARRIED ON AT CHATHAM (WITH RESPECT TO WHICH THE TRADE UNION ALLEGES THERE IS A COLLECTIVE AGREEMENT IN EXISTENCE) INVOLVED EXTRA-PROVINCIAL TRADE TO ONLY A SLIGHT DEGREE. THE CHATHAM OPERATIONS, HOWEVER, CONSTITUTE PART OF THE GENERAL OPERATIONS OF THE COMPANY AND ARE CONDUCTED UNDER GENERAL DIRECTION FROM THE COMPANY'S OFFICES AT LEAMINGTON.

ON THE BASIS OF THESE FACTS AND THE REPRESENTATIONS MADE AT THE HEARING, THE BOARD FINDS THAT THE OPERATIONS OF THE COMPANY CONSTITUTE ONE UNDERTAKING FALLING WITHIN THE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA AND THAT THE BOARD HAS NO JURISDICTION TO DEAL WITH THE QUESTION REFERRED TO IT BY THE MINISTER."

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION.

9499-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ROCKWELL-STANDARD CORPORATION OF CANADA, LTD. (RESPONDENT).

ON DECEMBER 9, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS RECEIVED A STATEMENT DATED DECEMBER 3RD, 1964, FROM PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT IN THIS MATTER. THE BODY OF THIS STATEMENT READS AS FOLLOWS: "WE THE UNDERSIGNED EMPLOYEES OF ROCKWELL STANDARD CORP. OF CANADA LTD., REQUEST THAT A SECRET VOTE OR ANOTHER HEARING BE HELD RE THE REPRESENTING OF THE EMPLOYEES BY THE U.A.W. C.I.O. WE CONSTITUTE THE MAJORITY OF THE EMPLOYEES OF THE COMPANY. WE DO NOT WANT THE UNION TO REPRESENT US. THE COMPANY NOW HAS THIRTEEN EMPLOYEES.(13)"

IF THIS STATEMENT SIGNED BY EMPLOYEES IS INTENDED AS A REQUEST TO CAUSE THE BOARD TO REVIEW ITS DECISION DATED OCTOBER 22ND, 1964 CERTIFYING THE APPLICANT AS BARGAINING AGENT IN THIS MATTER, THE BOARD IS NOT PERMITTED TO ACCEPT OBJECTIONS BY EMPLOYEES TO THE CERTIFICATION OF THE TRADE UNION WHICH HAS BEEN FILED LATER THAN THE TERMINAL DATE OF THIS APPLICATION, WHICH DATE WAS OCTOBER 13TH, 1964. (SEE SECTION 50 OF THE BOARD'S RULES OF PROCEDURE).

IF THIS STATEMENT IS A REQUEST FOR REVIEW THE BOARD IS OF OPINION THAT THERE IS NOTHING BEFORE THE BOARD WHICH WOULD CAUSE IT TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED OCTOBER 22ND, 1964, IN THIS MATTER.

IF HOWEVER, THE STATEMENT IS TO BE CONSIDERED AS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, SINCE IT HAS BEEN MADE WITHIN ONE YEAR OF THE DATE OF CERTIFICATION THEN, PURSUANT TO THE PROVISIONS OF SECTION 46 (1) OF THE LABOUR RELATIONS ACT, SUCH APPLICATION FOR TERMINATION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE EMPLOYEES HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THEIR APPLICATION IS THEREFOR DISMISSED."

INDEXED ENDORSEMENT - CERTIFICATION

9367-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LADISH CO. OF CANADA LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON THE EVIDENCE BEFORE US, WE ARE OF THE OPINION THAT THE AUTHORITY OF L. JANC SAR WITH REGARD TO THE TWO EMPLOYEES WHO HE SUPERVISES IS ONLY THAT OF A LEAD-HAND. ALTHOUGH JANC SAR STATES THAT HE WAS GIVEN THE AUTHORITY TO HIRE AND FIRE BY THE GENERAL MANAGER HE HAS NEVER EXERCISED THIS AUTHORITY AND ADMITS THAT SUCH ACTION ON HIS PART WOULD HAVE TO BE APPROVED BY SOMEONE ELSE. JANC SAR'S STATEMENT THAT HE WAS SURE THAT PERSONNEL WOULD GO ALONG WITH HIS RECOMMENDATIONS IS ONLY AN EXPRESSION OF HIS OWN OPINION. IN OUR VIEW, JANC SAR DOES NOT HAVE EFFECTIVE AUTHORITY TO HIRE OR FIRE EMPLOYEES. WHILE JANC SAR STATES THAT HE HAS ATTENDED A FEW MEETINGS OF MANAGEMENT THESE MEETINGS WERE WITH REGARD TO COST. THE EVIDENCE DOES NOT SUGGEST THAT HE REGULARLY ATTENDS MEETINGS OF MANAGEMENT. EVEN THOUGH JANC SAR HAS ACCESS TO COST INFORMATION, WE DO NOT FIND THAT HE HAS ANY CONFIDENTIAL DUTIES DIRECTLY RELATING TO LABOUR RELATIONS. THE BOARD ACCORDINGLY DECLARES FOR PURPOSES OF CLARITY THAT L. JANC SAR DOES NOT EXERCISE MANAGERIAL FUNCTIONS NOR IS HE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD ECLARES THAT R. CROUCH AND H. LEWIS ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

ON THE BASIS OF THE EVIDENCE BEFORE US, WE DO NOT FIND THAT MRS. M. HOSNER HAS, AT PRESENT, ANY CONFIDENTIAL DUTIES RELATING TO LABOUR RELATIONS. THE BOARD ACCORDINGLY DECLARES FOR PURPOSES OF CLARITY THAT MRS. M. HOSNER IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

I DISSENT.

ON THE EVIDENCE IN THIS CASE I WOULD EXCLUDE MR. L JANC SAR FROM THE BARGAINING UNIT IN THAT HE BOTH EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE EXAMINER'S REPORT MAKES IT ABUNDANTLY CLEAR THAT JANC SAR IS A LEAD-HAND IN CHARGE OF THE



COST DEPARTMENT AND THAT HE HAS FULL AUTHORITY OVER THE OTHER TWO EMPLOYEES IN THE DEPARTMENT WITH REGARD TO THE HANDLING OF WORK, THE MAKING OF CHANGES IN WORK PROCEDURE AND THE SWITCHING OF THE TWO EMPLOYEES. HE CAN DIRECT OVERTIME WORK, GRANT TIME OFF AND HAS ATTENDED MEETINGS OF MANAGEMENT. JANC SAR STATED THAT HE HAS THE RIGHT TO HIRE AND FIRE AND THAT SUCH AUTHORITY HAD BEEN GIVEN TO HIM BY MR. KRELL, THE GENERAL MANAGER OF THE COMPANY.

ADDITIONALLY JANC SAR WORKS WITH AND HAS ACCESS TO ALL TYPES OF COST INFORMATION. HE DOES NOT WORK WITH ACCOUNTS PAYABLE OR ACCOUNTS RECEIVABLE, NOR DOES HE WORK WITH A PROFIT AND LOSS STATEMENT. HE DOES HOWEVER, HAVE ALL OF THE INFORMATION WHICH IS NECESSARY FOR HIM TO PREPARE AN OVERHEAD COST FIGURE WHICH IS THEN USED BY HIS DEPARTMENT. HE ALSO HAS DETAILED INFORMATION ON THE COST OF MANUFACTURING ITEMS AND THE COMPANY'S COST ON ALL ITEMS WHICH IT SELLS WHETHER OR NOT THOSE ITEMS ARE MANUFACTURED BY THE COMPANY. HE IS PROVIDED WITH KNOWLEDGE CONCERNING ANY FUTURE CHANGES IN THE FIRM WHICH WOULD AFFECT COSTS. HE STATED THAT FROM THE DETAILED INFORMATION HE HAS, HE KNOWS THE MONTHLY PROFIT OR LOSS OF THE COMPANY.

AS PART OF HIS DUTIES, HE PREPARES REPORTS WHICH ARE MADE IN ORDER TO ENABLE THE COMPANY TO DECIDE WHETHER A PARTICULAR ITEM SHOULD BE MANUFACTURED BY THE COMPANY OR SHOULD BE PURCHASED ELSEWHERE AND MERELY RESOLD BY THE COMPANY. THIS WOULD BE OF VITAL IMPORTANCE IN LABOUR RELATIONS.

HE PREPARES THE LABOUR USAGE VARIANCE BY MACHINE ORDERS REPORT WHICH IS A REPORT WHICH COMPARES THE ACTUAL LABOUR USED IN MANUFACTURING AN ITEM TO THAT WHICH HAS BEEN SET AS A STANDARD FOR THAT OPERATION. THIS REPORT IS PREPARED WHENEVER IT APPEARS THAT A LOSS IS CAUSED BY LABOUR. AMONG THE POSSIBLE CAUSES IS THE INEFFICIENCY OF THE OPERATOR AND THE PERSON PREPARING THIS REPORT, AS PART OF HIS DUTIES, ASSESSES THE REASON FOR THE LOSS. AGAIN THIS IS A REPORT THAT DIRECTLY INVOLVES LABOUR RELATIONS.

I WOULD ALSO EXCLUDE MRS. HOSNER FROM THE BARGAINING UNIT ON THE BASIS THAT AS THE CONFIDENTIAL SECRETARY TO MR. OTT, THE OFFICE MANAGER AND ACCOUNTANT, SHE IS HIS "ALTER EGO" AND AS SUCH NECESSARILY HAS KNOWLEDGE OF AND WORKS WITH INFORMATION WHICH IS CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. MRS. HOSNER STATED IN EVIDENCE THAT SHE ONLY BEEN EMPLOYED AS MR. OTT'S SECRETARY SINCE AUGUST OF 1964 AND ACCORDINGLY SHE HAD NOT HAD AN OPPORTUNITY TO PERFORM ALL OF THE DUTIES OF A CONFIDENTIAL SECRETARY. ACCORDINGLY, MR. OTT WAS CALLED TO GIVE EVIDENCE CONCERNING WHAT HER DUTIES WOULD ENTAIL OVER THE COURSE OF A COMPLETE YEAR.

THE EVIDENCE DISCLOSES THAT HER DESK IS LOCATED JUST OUTSIDE MR. OTT'S OFFICE AND IS IN AN ENCLOSED OFFICE WHICH SHE SHARES WITH MR. SHILLINGTON, THE ASSISTANT ACCOUNTANT. SHE HAS A TELEPHONE ON HER DESK AND ANSWERS MR. OTT'S CALLS IN HIS ABSENCE. SHE HAS ACCESS TO ALL OF MR. OTT'S MAIL AS WELL AS TO HIS DESK.

PART OF MR. OTT'S DUTIES RELATE TO THE HIRING AND FIRING OF EMPLOYEES COMING WITHIN HIS AUTHORITY AND HIS SECRETARY WOULD BE EXPECTED TO DO

WHATEVER SECRETARIAL WORK MIGHT BE INVOLVED IN CONNECTION WITH THOSE DUTIES, ALTHOUGH NONE HAD ARISEN SINCE AUGUST WHEN MRS. HOSNER COMMENCED HER DUTIES AS A SECRETARY.

SIMILARLY, MRS. HOSNER HAD NOT BEEN CALLED UPON TO WORK ON THE ANNUAL BUDGET BECAUSE IT WOULD NOT BE PREPARED UNTIL DECEMBER AND JANUARY. PART OF MR. OTT'S CORRESPONDENCE IS WITH THE SECRETARY TREASURER OF THE COMPANY IN THE UNITED STATES AND, ALTHOUGH THIS CORRESPONDENCE SO FAR HAS BEEN HANDLED BY MR. KRELL'S SECRETARY UNTIL MATTERS WERE "STRAIGHTENED AWAY" THIS TYPE OF CORRESPONDENCE WOULD BE HANDLED BY HIS CONFIDENTIAL SECRETARY.

IT IS CLEAR FROM THE EVIDENCE THAT MR. OTT'S DUTIES ARE MANAGERIAL AND THAT THEY ARE HIGHLY CONFIDENTIAL IN REGARD TO LABOUR RELATIONS. HIS SECRETARY WOULD HAVE ACCESS TO AND WOULD BE REQUIRED TO PERFORM SECRETARIAL DUTIES IN CONNECTION WITH ALL OF THESE MATTERS AND AS SUCH, WOULD BE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ACCORDINGLY SHOULD BE EXCLUDED FROM THE BARGAINING UNIT."

9461-64-R: SUDBURY MINE MILL AND SMELTER WORKERS UNION LOCAL 598, AFFILIATED WITH THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"....THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT COMPANY CONSISTING OF THE EMPLOYEES IN THE RESPONDENT'S DIAMOND DRILLING OPERATION. IN ITS APPLICATION, THE APPLICANT STATES, "IT IS THE OPINION OF THE APPLICANT THAT THE EMPLOYEES CONCERNED IN THIS APPLICATION SHOULD PROPERLY BE INCLUDED IN THE UNIT OF EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT PRESENTLY IN EFFECT BETWEEN THE PARTIES AND CONJUNCTIVELY REQUESTS THE BOARD TO DETERMINE THIS MATTER". AT THE HEARING, THE REPRESENTATIVE OF THE APPLICANT CONTENDED THAT, ON THE WORDING OF THE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COMPANY AND HAVING IN MIND THE PREVAILING PRACTICE IN THE INDUSTRY, THE DIAMOND DRILLERS ARE INCLUDED IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT AND THE BOARD SHOULD SO DECLARE.

THE QUESTION AS TO WHETHER THE EMPLOYEES CONCERNED IN THIS APPLICATION WERE OR WERE NOT COVERED BY THE COLLECTIVE AGREEMENT IN FORCE BETWEEN THE APPLICANT UNION AND THE RESPONDENT COMPANY WAS REFERRED TO ARBITRATION SEVERAL YEARS AGO. IN APRIL, 1958, THE ARBITRATION BOARD HELD THAT THESE EMPLOYEES WERE NOT SO COVERED. TWO COLLECTIVE AGREEMENTS HAVE BEEN ENTERED INTO BETWEEN THE PARTIES SINCE THEN, AND NO CHANGE HAS BEEN MADE IN THE SCOPE CLAUSE. INDEED, WE WERE TOLD THAT THE ISSUE AS TO WHETHER THE EXPLORATION DIAMOND DRILLERS SHOULD BE INCLUDED WAS NOT EVEN RAISED IN THE NEGOTIATIONS LEADING UP TO THESE TWO AGREEMENTS. IN THESE CIRCUMSTANCES, WE FIND THAT THE EMPLOYEES CONCERNED IN THE INSTANT APPLICATION ARE NOT INCLUDED IN THE BARGAINING UNIT OF EMPLOYEES ON WHOSE BEHALF THE APPLICANT UNION IS PRESENTLY ENTITLED TO ACT AS BARGAINING AGENT. AT THE HEARING, THERE WAS SOME DISCUSSION AS TO WHETHER THE BOARD COULD OR SHOULD EITHER MODIFY THE SCOPE CLAUSE IN THE AGREEMENT OR VARY THE CERTIFICATE ISSUED TO THE PRESENT APPLICANT BY THE LABOUR COURT OF ONTARIO ON MARCH 7, 1944, SO AS TO INCLUDE IN THE BARGAINING UNI

THE EXPLORATION DIAMOND DRILLERS. IN SO FAR AS THE FIRST OF THESE ALTERNATIVES IS CONCERNED, THE BOARD HAS NO JURISDICTION TO REVISE A COLLECTIVE AGREEMENT IN CIRCUMSTANCES SUCH AS EXIST IN THIS CASE. IT SHOULD BE NOTED THAT, THE LABOUR RELATIONS ACT DOES CONFER POWER UPON THE BOARD TO MODIFY A COLLECTIVE AGREEMENT IN TWO INSTANCES: (1) UNDER SECTION 34(3) OF THE ACT THE BOARD MAY MODIFY AN ARBITRATION PROVISION IN A COLLECTIVE AGREEMENT AND UNDER SECTION 47A THE BOARD MAY IN THE CIRCUMSTANCES THERE INDICATED AMEND A BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT. NOWHERE ELSE IN THE ACT IS A SIMILAR POWER CONFERRED UPON THE BOARD. IN SO FAR AS THE SECOND ALTERNATIVE IS CONCERNED, IF WE ASSUME FOR PRESENT PURPOSES, BUT WITHOUT DECIDING THE POINT, THAT THE BOARD DOES HAVE AUTHORITY TO VARY THE CERTIFICATE ISSUED TO THE APPLICANT ON MARCH 7, 1944, IT WOULD IN OUR OPINION BE INADVISABLE TO DO SO IN THE CIRCUMSTANCES OF THIS CASE, ESPECIALLY IN VIEW OF THE LENGTH OF TIME SINCE THE CERTIFICATE WAS ISSUED...."

9504-64-R: AMALGAMATED TRANSIT UNION, DIVISION 1415, WINDSOR, ONTARIO (APPLICANT)  
V. SKINNER SCHOOL BUS LINES (ST. THOMAS) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF ITS TERMINAL AT WINDSOR.

THE RESPONDENT HAS A FLEET OF EIGHT HIGHWAY COACHES, SEVEN OF WHICH ARE USED ON ITS REGULARLY SCHEDULED DAILY BUS SERVICE FROM WINDSOR TO THREE OTHER MUNICIPALITIES IN THE AREA. THE RESPONDENT ALSO HAS ELEVEN SCHOOL BUSES WHICH ARE USED TO SERVICE CONTRACTS WITH THE PUBLIC AND SEPARATE SCHOOL BOARDS IN THE TOWNSHIP OF SANDWICH WEST. IN ADDITION THE RESPONDENT OPERATES A CHARTER BUS SERVICE. ONE OF ITS HIGHWAY COACHES IS DESIGNATED FOR USE ON CHARTER TRIPS. OTHER OF THE RESPONDENT'S HIGHWAY COACHES ALSO ARE USED ON CHARTER TRIPS WHEN THEY ARE NOT REQUIRED FOR THE REGULAR BUS SERVICE.

THE DRIVERS EMPLOYED ON THE REGULAR BUS SYSTEM ARE FULL-TIME EMPLOYEES. THESE DRIVERS ALSO ARE USED ON THE CHARTER TRIPS. THE DRIVERS EMPLOYED ON THE SCHOOL BUSES ARE PART-TIME EMPLOYEES WHO GENERALLY HAVE OTHER OCCUPATIONS IN ADDITION TO THEIR EMPLOYMENT WITH THE RESPONDENT. OCCASIONALLY, ONE OF THESE DRIVERS TAKES CHARTER TRIPS.

DURING THE FIRST EIGHT MONTHS OF THE RESPONDENT'S CHARTER OPERATIONS WHICH COMMENCED AT THE BEGINNING OF 1964, A TOTAL OF 129 CHARTER TRIPS HAVE GONE TO THE UNITED STATES. THIS REPRESENTS 65 PER CENT OF THE RESPONDENT'S CHARTER BUSINESS. THE RESPONDENT'S CHARTER CONSTITUTES APPROXIMATELY 17 PER CENT OF ITS TOTAL BUSINESS. THE RESPONDENT DOES NOT HAVE ANY TERMINAL FACILITIES IN THE UNITED STATES NOR DOES IT PROVIDE REGULAR SERVICE TO ANY POINT IN THE UNITED STATES.

THE RESPONDENT SUBMITS THAT THE BOARD HAS NO JURISDICTION WITH RESPECT TO ITS BUSINESS ON THE GROUNDS THAT THE RESPONDENT IS ENGAGED IN AN UNDERTAKING EXTENDING BEYOND THE PROVINCE. THE RESPONDENT ARGUES THAT ITS CHARTER OPERATIONS TO THE UNITED STATES ARE SUFFICIENTLY CONTINUOUS AND REGULAR SO AS TO FALL WITHIN THE PURVIEW OF SECTION 92(10) (A) OF THE



BRITISH NORTH AMERICA ACT. IN SUPPORT OF ITS ARGUMENT THE RESPONDENT RELIES ON THE DECISION OF THE SUPREME COURT OF ONTARIO IN REGINA V. TORONTO MAGISTRATES, EX PARTE TANK TRUCK TRANSPORT LTD., 1960 O.R. 497.

SINCE THE RESPONDENT'S OPERATIONS EXTENDING INTO THE UNITED STATES ARE TOTALLY DEPENDENT ON THE DESIRES OF PERSONS WISHING TO UTILIZE THE CHARTER SERVICE OFFERED BY THE RESPONDENT, WE DO NOT FIND A PATTERN OR REGULARITY IN THESE OPERATIONS WHICH SATISFIES US THAT THE BOARD IS WITHOUT JURISDICTION TO ENTERTAIN THIS APPLICATION."

9536-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. AMHERSTBURG 5¢ TO \$1.00 STORE LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE EXAMINER WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF A PERSON CLASSIFIED BY THE RESPONDENT AS MANAGEMENT TRAINEE. THE BOARD IS INTERESTED IN THE DUTIES AND RESPONSIBILITIES OF THE MANAGEMENT TRAINEE AS OF THE DATE OF MAKING THIS APPLICATION, WHICH DATE IS THE EFFECTIVE DATE FOR MAKING A DETERMINATION AS TO WHETHER OR NOT THE MANAGEMENT TRAINEE IS ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

A QUESTION HAS ARISEN AS TO THE RIGHT OF THE RESPONDENT "CROSS-EXAMINE THE MANAGEMENT TRAINEE IN RELATION TO THE FUTURE DUTIES OF THE MANAGEMENT TRAINEE AS SET OUT IN THE MANAGEMENT TRAINING MANUAL..."

THE BOARD DIRECTS THAT THE CROSS-EXAMINATION OF THE MANAGEMENT TRAINEE BE CONFINED TO RELEVANT MATTERS FALLING WITHIN THE PERSONAL KNOWLEDGE AND EXPERIENCE OF THE MANAGEMENT TRAINEE."

9582-64-R: TEAMSTERS LOCAL UNION No. 230, READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, I.B. OF T.C.W. & H. OF A. (APPLICANT) V. CEDARHUST PAVING CO. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE DUMP TRUCK OPERATORS, FLOAT DRIVERS, SERVICE TRUCK DRIVERS AND GAS TRUCK DRIVERS ARE INCLUDED IN THE BARGAINING UNIT WHEN ENGAGED IN THE OPERATIONS OF THE RESPONDENT MORE PARTICULARLY DESCRIBED IN ITS DECISION IN THIS MATTER DATED NOVEMBER 23RD, 1964."

ON NOVEMBER 23, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING CERTIFICATION FOR TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. THE RESPONDENT CONTENDS THAT THE APPLICATION SHOULD BE RESTRICTED TO DUMP TRUCK DRIVERS "ENGAGED ON CONSTRUCTION SITES", THE RESPONDENT ARGUING THAT ITS OTHER DRIVERS DO NOT FALL UNDER THE CONSTRUCTION INDUSTRY PROVISIONS. THUS, ONE OF THE ISSUES BEFORE THE BOARD IS THE MEANING TO BE GIVEN THE TERM "CONSTRUCTION INDUSTRY" AS DEFINED IN SECTION 1(1)(DA) OF THE ACT WHICH PROVIDES:



"CONSTRUCTION INDUSTRY" MEANS THE BUSINESSES THAT ARE ENGAGED IN CONSTRUCTING, ALTERING, DECORATING, REPAIRING OR DEMOLISHING BUILDINGS, STRUCTURES, ROADS, SEWERS, WATER OR GAS MAINS, PIPE LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF.

RESPONDENT SUBMITS THAT ONLY EMPLOYEES ENGAGED ON THE WORK SITE FALL UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. THE APPLICANT POINTS OUT THAT EMPLOYEES AS SUCH ARE NOT MENTIONED IN THE DEFINITION AND THAT "CONSTRUCTION INDUSTRY" IS DEFINED IN TERMS OF "BUSINESSES THAT ARE ENGAGED" IN DOING CERTAIN ENUMERATED THINGS "AT THE SITE THEREOF". IN THE APPLICANT'S VIEW, EMPLOYEES CLOSELY ASSOCIATED WITH THE "ON SITE" WORK MUST FALL UNDER THE CONSTRUCTION INDUSTRY PROVISIONS AS BEING PART OF "THE TEAM" ENGAGED IN THE BUSINESS OF CONSTRUCTING A WORK AT THE SITE THEREOF.

THIS IS THE FIRST CASE IN WHICH THE CONSTRUCTION INDUSTRY DIVISION OF THE BOARD HAS BEEN FACED WITH THE TASK OF INTERPRETING SECTION 1(1) (DA). BECAUSE THE CASE IN WHICH THE ISSUE HAS ARISEN DEALS ONLY WITH ONE ASPECT OF THE CONSTRUCTION INDUSTRY, NAMELY, THE CONSTRUCTION, ALTERATION AND REPAIR OF ROADS AND, FURTHER, BECAUSE THE EVIDENCE BEFORE THE BOARD HAS, ON THE AGREEMENT OF THE PARTIES, BEEN CONFINED LARGELY TO STATEMENTS OF COUNSEL, THIS DIVISION IS RELUCTANT TO GO ANY FURTHER THAN IS ABSOLUTELY NECESSARY FOR THE DISPOSITION OF THE CASE. IN OTHER WORDS, WE HESITATE TO LAY DOWN ANY BROAD GENERAL PRINCIPLES WHICH MIGHT BE REGARDED AS APPLYING TO THE CONSTRUCTION INDUSTRY IN GENERAL OR INDEED TO ALL CASES INVOLVING ROAD CONSTRUCTION, ALTERATION OR REPAIR. HOWEVER, IN ORDER TO DISPOSE OF THE PRESENT CASE, IT APPEARS TO US THAT WE MUST TO SOME EXTENT FACE THE CONFLICTING SUBMISSIONS IN THE ARGUMENTS BEFORE US. AS MIGHT BE EXPECTED EACH PARTY IS EMPHASIZING THE ELEMENTS IN THE DEFINITION MOST FAVOURABLE TO ITS CLAIM. THUS, THE APPLICANT STRESSES THE WORD "BUSINESSES" AND IS INCLINED TO OVERLOOK THE WORDS "AT THE SITE THEREOF" WHEREAS THE OPPOSITE IS THE CASE IN THE SUBMISSION OF THE RESPONDENT. IN OUR VIEW, ALL THE WORDS IN THE DEFINITION MUST BE CONSIDERED AND EFFECT GIVEN THERETO. THUS IT IS CLEAR THAT THE RESPONDENT IN THIS CASE, TO BE AN EMPLOYER WITHIN THE MEANING OF SECTION 90(A) OF THE ACT WHICH PROVIDES:

"EMPLOYER" MEANS A PERSONS WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY, MUST OPERATE A BUSINESS WHICH IS ENGAGED IN CONSTRUCTING, ALTERING OR REPAIRING ROADS AT THE SITE THEREOF. DOES THIS MEAN THAT ALL HIS EMPLOYEES, FOR THE PURPOSES OF THE CONSTRUCTION INDUSTRY SECTIONS, MUST BE WORKING AT THE SITE?

THE RESPONDENT CONCEDES THAT SUCH EMPLOYEES NEED NOT NECESSARILY BE CONTINUOUSLY ENGAGED AT THE SITE BECAUSE SUCH IS NOT THE CASE WITH RESPECT TO THE DUMP TRUCK OPERATORS WHO, THE RESPONDENT ADMITS, ARE PROPERLY INCLUDED IN THE BARGAINING UNIT. FURTHERMORE, WE THINK THAT SOME SIGNIFICANCE MUST ATTACH TO THE FACT THAT SECTION 1(1)(DA) DOES NOT REFER TO EMPLOYEES BUT SPEAKS INSTEAD OF BUSINESSES. PARTICULARLY IS THIS SO WHEN THAT SUBSECTION IS COMPARED WITH SECTION 35(4)(D) OF THE ACT

WHICH PROVIDES THAT A TRADE UNION AND AN EMPLOYER MAY NOT INCLUDE A UNION SECURITY CLAUSE IN A FIRST COLLECTIVE AGREEMENT EXCEPT IN CERTAIN INSTANCES, ONE OF WHICH IS:

- (D) WHERE THE EMPLOYER AND HIS EMPLOYEES IN THE BARGAINING UNIT ARE ENGAGED IN THE CONSTRUCTION, ALTERATION, DECORATION, REPAIR OR DEMOLITION OF A BUILDING, STRUCTURE, ROAD, SEWER, WATER OR GAS MAIN, PIPE LINE, TUNNEL, BRIDGE, CANAL, OR OTHER WORK AT THE SITE THEREOF.

IT SEEMS OBVIOUS THAT PARAGRAPH (D) IS DEALING WITH THE CONSTRUCTION INDUSTRY, YET HERE THE LANGUAGE IS "AN EMPLOYER AND HIS EMPLOYEES".

ON THE OTHER HAND, IT SEEMS REASONABLE TO CONCLUDE THAT BEFORE AN EMPLOYER CAN BE SAID TO BE OPERATING A BUSINESS ENGAGED IN CONSTRUCTION OF "WORKS" AT THE SITE THEREOF, HE MUST HAVE EMPLOYEES AT WORK ON THE SITE. BUT IT ALSO SEEMS REASONABLE TO CONCLUDE THAT IN THE OPERATION OF THE BUSINESS AT THE SITE, EMPLOYEES MAY FROM TIME TO TIME HAVE TO LEAVE THE SITE TO PERFORM WORK IN CONNECTION WITH THE WORK AT THE SITE. FURTHER, THE OPERATION OF THE BUSINESS AT THE SITE MAY WELL INCLUDE THE USE OF EMPLOYEES IN TRANSPORTING MATERIALS AND EQUIPMENT TO THE SITE, EVEN THOUGH THESE EMPLOYEES ARE NOT, IN ONE SENSE, DIRECTLY INVOLVED IN "ON SITE" WORK. OF COURSE IN ANY PARTICULAR CASE DIFFICULT QUESTIONS MAY ARISE AS TO WHETHER SUCH EMPLOYEES ARE IN FACT NORMALLY EMPLOYED AS PART OF THE BUSINESS AT THE SITE. THE ANSWERS TO SUCH QUESTIONS WILL DEPEND ON THE NATURE OF THE BUSINESS AND ALL THE FACTS AND CIRCUMSTANCES OF THE PARTICULAR CASE.

THE PRESENT CASE IS COMPLICATED BY THE FACT THAT THE RESPONDENT ENGAGES IN A NUMBER OF DIFFERENT OPERATIONS, ALL OF WHICH REQUIRE TRUCK DRIVERS. THE PARTIES THEMSELVES CONCEDE THAT DRIVERS WHEN ENGAGED IN TRANSPORTING MATERIALS OR EQUIPMENT TO THIRD PARTIES ARE NOT AFFECTED BY THE PRESENT APPLICATION. THE SAME IS TRUE WITH RESPECT TO THE DRIVERS OR OPERATORS OF EDUCTORS, ROAD FLUSHERS AND STREET SWEEPERS.

WHILE THE APPLICANT WAS NOT QUITE AS POSITIVE IN THE CASE OF WINTER SANDING TRUCKS AND SNOW PLOWS, IT DID CONCEDE THAT IT WOULD BE HARD PRESSES TO ARGUE THAT DRIVERS OF THESE VEHICLES SHOULD BE INCLUDED, AND WE HAVE NO HESITATION IN FINDING THAT THEY OUGHT NOT TO BE INCLUDED IN THE BARGAINING UNIT. AGAIN, WHILE THERE DOES NOT APPEAR TO BE AGREEMENT CONCERNING THE OPERATION OF FARM TRACTORS, HAVING REGARD TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS, MADE JUNE 8, 1964, PARTICULARLY AT PAGE 16 OF THE PAMPHLET COPY FILED WITH THE BOARD, IT WOULD APPEAR THAT THE APPLICANT'S CONTENTION THAT SUCH OPERATORS ARE BARGAINED FOR BY ANOTHER TRADE UNION IS CORRECT, AND IN THESE CIRCUMSTANCES WE WOULD NOT INCLUDE THEM IN THE BARGAINING UNIT. NOR WOULD WE INCLUDE THE DRIVERS OF HYDRO SEEDERS MAINLY BECAUSE, ON THE BASIS OF THE EVIDENCE BEFORE US, THE WORK INVOLVED IS NOT GENERALLY INCLUDED IN A ROAD CONSTRUCTION CONTRACT, BUT IS NORMALLY DONE UNDER A SEPARATE CONTRACT WITH THE MUNICIPALITY OR RAILWAY.

THE QUESTION OF THE INCLUSION OR EXCLUSION OF THE DRIVERS OF OILERS

AND TANKERS SUPPLYING OIL TO THE OILERS IS MORE DIFFICULT. IN THE MAIN, THE OILERS AND THEIR DRIVERS ARE RENTED OUT TO MUNICIPALITIES FOR THE PURPOSE OF OILING ROADS IN THE SUMMER TO KEEP THE DUST DOWN. ANY SCRAPING IN CONNECTION THEREWITH IS DONE BY THE MUNICIPALITY. OCCASIONALLY, HOWEVER, OILING MAY BE DONE ON A ROAD CONSTRUCTION JOB OF THE RESPONDENT. IT IS ARGUED BY THE APPLICANT THAT THE OILING PERFORMED FOR A MUNICIPALITY SHOULD BE REGARDED AS REPAIR OF ROADS. ON THE OTHER HAND, THE APPLICANT FOUND IT DIFFICULT TO CLAIM THE DRIVERS OF SANDING TRUCKS, THE APPLICANT ADMITTING THAT THE OPERATIONS THERE INVOLVED WERE MORE AKIN TO MAINTENANCE THAN TO REPAIR. MAINTENANCE AS SUCH IS NOT INCLUDED IN SECTION 1(1)(DA).

WHILE THE MATTER MAY NOT BE ENTIRELY FREE FROM DOUBT, WE HAVE COME TO THE CONCLUSION ON THE EVIDENCE BEFORE US THAT THE OILING OPERATIONS OF THE RESPONDENT DO NOT FALL WITHIN THE WORD "REPAIR" IN SECTION 1(1)(DA) AND THAT CONSEQUENTLY THE DRIVERS OF THE OILERS AND OF THE TANKERS SUPPLYING THE OIL WHEN ENGAGED IN SUCH OPERATIONS OUGHT NOT TO BE COVERED BY THE PRESENT APPLICATION. HOWEVER, WHEN THE OILING OPERATIONS ARE CARRIED ON IN CONNECTION WITH ROAD CONSTRUCTION, AS DOES HAPPEN OCCASIONALLY, THEN THE DRIVERS WOULD BE INCLUDED IN A ROAD CONSTRUCTION UNIT.

THERE REMAINS, THEN, FOR CONSIDERATION AND APART FROM THE DUMP TRUCK OPERATORS, DRIVERS OF FLOATS, SERVICE TRUCKS AND GAS TRUCKS. THE FLOATS TRANSPORT EQUIPMENT TO THE SITE OF ROAD CONSTRUCTION JOBS AND MAY MOVE EQUIPMENT FROM JOB TO JOB. THIS CONSTITUTES 99% OF THE DUTIES OF FLOAT DRIVERS. THE GAS TRUCKS TRANSPORT GASOLINE TO THE ROAD CONSTRUCTION SITES FOR USE OF VEHICLES ON THE SITE. THE SERVICE TRUCKS TRANSPORT WORKERS AND SMALLER EQUIPMENT SUCH AS SHOVELS, LANTER BARRICADES AND GREASE FOR USE ON CONSTRUCTION SITES. ALTHOUGH THE APPLICANT SOUGHT TO EXCLUDE THE DRIVERS OF SERVICE TRUCKS FROM THE APPLICATION, WE ARE UNABLE TO SEE ANY ESSENTIAL DIFFERENCE IN THEIR SERVICES AND THOSE OF THE FLOAT AND GAS TRUCK OPERATORS. IF ANY ONE OF THESE OPERATIONS CAN BE SAID TO BE PART OF THE BUSINESS OF CONSTRUCTING A ROAD AT THE SITE THEREOF, ALL MUST BE SO INCLUDED. OUGHT THEY TO BE

RESPONDENT CONTENDS THAT NONE OF THESE DRIVERS PERFORMS HIS DUTIES AT THE SITE EXCEPT IN AN INCIDENTAL FASHION. THERE IS IN FACT NO EVIDENCE BEFORE US AS TO THEIR DUTIES, IF ANY, ONCE THEY REACH THE SITE. HOWEVER, AS WE POINTED OUT ABOVE, IF THE OPERATIONS OR SERVICES PERFORMED BY THESE DRIVERS ARE REGARDED AS AN INTEGRAL AND NECESSARY PART OF THE BUSINESS OF THE RESPONDENT IN CONSTRUCTING, ALTERING OR REPAIRING ROAD AT THE SITE, THEN IN OUR VIEW THE WORDING OF THE DEFINITION OF CONSTRUCTION INDUSTRY IN SECTION 1(1)(DA) IS WIDE ENOUGH TO INCLUDE SUCH EMPLOYEES UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

ON THE BASIS OF THE EVIDENCE BEFORE US AND AFTER DUE CONSIDERATION WE HAVE COME TO THE CONCLUSION THAT THE OPERATIONS OF THE FLOATS AND SERVICE AND GAS TRUCKS, ALONG WITH THE DUMP TRUCKS, DO IN FACT CONSTITUTE THE "HARD CORE" OR ESSENTIAL FEATURES OF THE RESPONDENT'S ROAD CONSTRUCTION BUSINESS AT THE SITE (IN SO FAR AS TRUCKS FORM A NECESSARY PART THEREOF) AND THAT THE DRIVERS THEREOF CONSEQUENTLY ARE ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT IN AN APPLICATION FOR CERTIFICATION



MADE UNDER THE PROVISIONS OF SECTION 92 OF THE ACT.

WE CANNOT LEAVE THIS ASPECT OF THE CASE WITHOUT ACKNOWLEDGING THAT THE DECISION MAY INVOLVE THE PARTIES IN SOME DIFFICULTY WHEN IT COMES TO THE NEGOTIATION, ADMINISTRATION AND RENEGOTIATION OF A COLLECTIVE AGREEMENT. HOWEVER, WE HASTEN TO ADD THAT ANY DECISION RESTRICTING THE APPLICATION OF THE CONSTRUCTION INDUSTRY SECTIONS TO EMPLOYEES SOLELY ENGAGED IN "ON SITE" WORK WOULD LEAD TO JUST AS MANY DIFFICULTIES, IF NOT FOR THE PARTIES HERE INVOLVED, CERTAINLY IN OTHER TYPES OF BUSINESSES GENERALLY REGARDED AS BEING PART OF THE CONSTRUCTION INDUSTRY.

THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WAS RESTRICTED TO ONE CLASSIFICATION, NAMELY, DUMP TRUCK OPERATORS. IN VIEW OF THE REASONING SET OUT ABOVE, THE RESPONDENT IS DIRECTED TO FILE WITH MR. R.A. WOOLAND EXAMINER, FORTHWITH, A LIST OF EMPLOYEES IN THE FOLLOWING CLASSIFICATIONS: DUMP TRUCK OPERATORS, FLOAT DRIVERS SERVICE TRUCK DRIVERS AND GAS TRUCK DRIVERS ENGAGED IN THE OPERATIONS DESCRIBED ABOVE. SINCE THE BOARD HAS NOT YET MADE ANY DETERMINATION WITH RESPECT TO THE GEOGRAPHIC AREA. THE LIST SHOULD INDICATE THE EMPLOYEES WORKING IN THE AMENDED AREA PROPOSED BY THE APPLICANT AND THOSE WORKING IN THE AREA PROPOSED BY THE RESPONDENT."

ON DECEMBER 14, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

IN ITS DECISION DATED NOVEMBER 23RD, 1964, THE BOARD MADE CERTAIN FINDINGS RESPECTING THE CLASSIFICATIONS TO BE INCLUDED IN THE BARGAINING UNIT AND DIRECTED THE RESPONDENT TO FILE LISTS OF EMPLOYEES FOR THESE CLASSIFICATIONS. IN CONNECTION WITH THE DESCRIPTION OF THE BARGAINING UNIT, THERE REMAINS FOR CONSIDERATION THE QUESTION OF THE APPROPRIATE GEOGRAPHIC AREA. THE APPLICANT IN ITS AMENDED DESCRIPTION IS SEEKING THE REGULAR BOARD AREA FOR CONSTRUCTION INDUSTRY CASES IN THE TORONTO REGION, NAMELY 25 MILES FROM THE TORONTO CITY HALL PLUS NEWMARKET PLUS AN AREA ADJOINING NEWMARKET. THIS AREA IS FOUND IN MANY OF THE COLLECTIVE AGREEMENTS OF TORONTO-BASED UNIONS. THE RESPONDENT SUBMITS THAT SINCE WE ARE DEALING WITH THE ROAD CONSTRUCTION INDUSTRY, THE AREA FOUND IN THE AGREEMENT BETWEEN THE METRO TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS, MADE JUNE 8, 1964, IS THE APPROPRIATE AREA BECAUSE IT REPRESENTS THE COLLECTIVE BARGAINING PATTERN OR HISTORY FOR THE INDUSTRY IN THIS AREA. THE PROPOSED AREA IS SMALLER THAN THE 25-MILE AREA AND IS CONTAINED THEREIN, CONSISTING AS IT DOES ONLY OF METROPOLITAN TORONTO AND CERTAIN PORTIONS OF TORONTO AND TORONTO-GORE TOWNSHIPS SOUTH OF HIGHWAY NO. 7. THE PRESENT APPLICANT IS A PARTY TO THE AFOREMENTIONED AGREEMENT.



WHILE PATTERN OR HISTORY HAS BEEN AN IMPORTANT FACTOR IN THE DETERMINATION OF APPROPRIATE GEOGRAPHIC AREAS, THE BOARD IN SEVERAL CASES HAS DECLINED TO FOLLOW AN ESTABLISHED PATTERN. THUS, IN ABLE CONSTRUCTION, O.L.R.B. MONTHLY REPORT, APRIL, 1964, PAGE 6, THE BOARD SAID AT PAGE 7:

HOWEVER, AS WAS POINTED OUT IN BALL BROTHERS LTD. (SUPRA), THE FACT THAT A PARTICULAR UNION HAS ESTABLISHED A PATTERN OF COLLECTIVE BARGAINING FOR A GIVEN AREA IS NOT THE ONLY FACTOR WHICH THE BOARD TAKES INTO CONSIDERATION. THE JURISDICTION OF OTHER LOCAL UNIONS IN THE AREA AND THE PATTERN OF COLLECTIVE BARGAINING OF THE OTHER UNIONS MUST ALSO BE CONSIDERED. IN OTHER WORDS, THE BOARD IS ANXIOUS AS FAR AS POSSIBLE, TO ESTABLISH AREAS WHICH WILL BE UNIFORM FOR EMPLOYERS AND TRADE UNIONS ALIKE.

SEE ALSO UNICRETE CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, MAY, 1963, P. 67. FOR A DISCUSSION OF THE FACTORS WHICH THE BOARD HAS CONSIDERED IN DETERMINING GEOGRAPHIC AREAS, SEE SUPPLEMENT TO O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, PP. 1-13. SEE ALSO P.R. CONNOLLY CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1963, P. 502.

HOWEVER, THE RESPONDENT ARGUES IN EFFECT THAT REGARD SHOULD BE HAD TO THE HISTORY OR PATTERN IN DIFFERENT BRANCHES OF THE CONSTRUCTION INDUSTRY. WHILE IT MAY BE THAT UNIFORMITY REGARDING GEOGRAPHIC AREA WILL NOT BE POSSIBLE TO ACHIEVE IN ALL CASES, IN OUR VIEW, DEPARTURES FROM THE STANDARD FORM SHOULD BE LIMITED. IF THE BOARD WERE TO ADOPT THE RESPONDENT'S PROPOSED AREA IN THE PRESENT CASE, IT WOULD BE EXTREMELY DIFFICULT FOR THE BOARD TO REFUSE TO RECOGNIZE AREA PATTERNS ESTABLISHED IN OTHER BRANCHES OF THE CONSTRUCTION INDUSTRY WHICH DO NOT CONFORM TO THE ESTABLISHED AREA. YET IT IS CLEAR THAT A NUMBER OF DIFFERENT AREAS DO PREVAIL AS FOR EXAMPLE IN THE COLLECTIVE AGREEMENTS WHICH THE ELECTRICAL WORKERS, THE PLUMBERS, THE MARBLE MASONS, THE MILLWRIGHTS, THE SHEET METAL WORKERS AND THE IRON WORKERS HAVE WITH VARIOUS EMPLOYERS AND EMPLOYERS' ASSOCIATIONS. MOREOVER, MANY OF THESE AREAS DO NOT COME ONE WITH THE OTHER. CONSEQUENTLY, TO ACCEPT THE RESPONDENT'S SUBMISSION IN THIS CASE WOULD LEAD INEVITABLY TO THE ESTABLISHMENT BY THE BOARD OF AT LEAST EIGHT SEPARATE AREAS CENTERING ON TORONTO. IN THIS CONNECTION IT SHOULD BE NOTED THAT THE BOARD HAS REFUSED THE REQUEST OF THE ELECTRICAL WORKERS TO DEPART FROM THE ESTABLISHED TORONTO AREA DESPITE A PATTERN OF BARGAINING TO THE CONTRARY.

IT IS ALSO OF INTEREST TO NOTE THAT IN A RECENT CASE BEFORE THE BOARD THE PLUMBERS REQUESTED AND OBTAINED THE REGULAR AREA ALTHOUGH THEIR AREA DIFFERS FROM THE AREA IN THEIR AGREEMENT WITH THE TORONTO LABOUR BUREAU. FURTHERMORE, IN CERTAIN OPERATIONS WHICH MUST BE REGARDED AS AT LEAST CLOSELY ALLIED TO IF NOT, IN MANY RESPECTS, AN INTEGRAL PART OF THE ROADS AND CONSTRUCTION INDUSTRY, THAT IS, PILE DRIVING, CONSTRUCTION OF BRIDGES AND OTHER STRUCTURES AND SEWER AND WATERMAIN WORK, THE BOARD HAS BEEN GRANTING THE AMENDED AREA PROPOSED BY THE APPLICANT OR ONE CLOSELY ALLIED THERETO."

2604-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT STUDENTS WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, WHETHER FULL-TIME OR PART-TIME, ARE INCLUDED IN THE BARGAINING UNIT."

THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:-

"DURING THE COURSE OF ITS EXAMINATION OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS MATTER, THE BOARD DISCOVERED WHAT APPEARED TO BE A DISCREPANCY WITH RESPECT TO THE SIGNATURES ON THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARD FILED BY THE APPLICANT ON BEHALF OF ALLEN ORME. THE BOARD AFTER CONDUCTING A PRELIMINARY INVESTIGATION REGARDING THE DISCREPANCY SET THE MATTER DOWN FOR FURTHER HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THE MEMBERSHIP CARD.

THE EVIDENCE BEFORE US IS THAT AFTER A UNION ORGANIZING MEETING OF THE PART-TIME EMPLOYEES OF THE RESPONDENT, DUMAS, A PART-TIME EMPLOYEE, ASKED ORME, ANOTHER PART-TIME EMPLOYEE, IF HE WANTED TO JOIN THE UNION. ORME ANSWERED IN THE AFFIRMATIVE. ONE EVENING, SOME TIME LATER, DUMAS AND ERNEST CLOUTIER, THE SHOP STEWARD FOR THE FULL-TIME EMPLOYEES OF THE RESPONDENT, WENT TO ORME'S HOUSE FOR THE PURPOSE OF HAVING HIM SIGN A UNION MEMBERSHIP CARD. ORME WAS NOT AT HOME. DUMAS AND CLOUTIER LATER THE SAME EVENING WENT TO THE CLOUTIER'S RESIDENCE. WHILE HE WAS THERE, DUMAS SIGNED ORME'S NAME ON BOTH THE APPLICATION AND RECEIPT PORTION OF A MEMBERSHIP CARD ABOVE THE WORD "SIGNATURE". DUMAS INFORMED CLOUTIER THAT HE HAD SIGNED ORME'S NAME ON THE CARD WHEN HE SUBSEQUENTLY GAVE THE CARD TO CLOUTIER. CLOUTIER FILLED OUT THE REMAINDER OF THE APPLICATION CARD AND SIGNED THE RECEIPT PORTION CONFIRMING THE PAYMENT OF A \$1.00 INITIATION FEE BY ORME. CLOUTIER HAD RECEIVED CAREFUL INSTRUCTIONS FROM WALTER KENSIT, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT, AS TO THE CORRECT WAY IN WHICH TO SIGN UP MEMBERS IN THE UNION. THE NEXT DAY CLOUTIER MAILED SEVENTEEN COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS, INCLUDING THE CARD FOR ORME TO THE OFFICE OF HUGH BUCHANAN, THE ONTARIO SUPERVISOR OF THE APPLICANT UNION. CLOUTIER ALSO ENCLOSED A MONEY ORDER FOR SEVENTEEN DOLLARS COVERING AN INITIATION FEE OF \$1.00 FOR EACH OF THE MEMBERSHIP CARDS. ORME PAID ONE DOLLAR FOR MEMBERSHIP IN THE UNION TO DUMAS A COUPLE OF DAYS LATER. BUCHANAN RECEIVED THE ABOVE MEMBERSHIP EVIDENCE TOGETHER WITH A COVERING LETTER FROM CLOUTIER WHICH STATED THAT HE WAS ENCLOSED SEVENTEEN APPLICATIONS FOR MEMBERSHIP AND A MONEY ORDER FOR SEVENTEEN DOLLARS. THERE WAS NO DISCLOSURE IN THE LETTER OF THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THE MEMBERSHIP CARD SUBMITTED FOR ORME. BUCHANAN DID NOT MAKE ANY INQUIRIES OF CLOUTIER. BUCHANAN SUBSEQUENTLY COMPLETED AND EXECUTED THE FORM 9, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS AND FILED IT WITH THE BOARD.

THE RELEVANT FACTORS IN THE INSTANT CASE ARE THAT CLOUTIER, A UNION STEWARD, CONTRARY TO CAREFUL INSTRUCTIONS, SUBMITTED AS EVIDENCE OF MEMBERSHIP A MEMBERSHIP APPLICATION CARD WITH FULL KNOWLEDGE THAT THE SIGNATURES APPEARING ON THE CARD WERE NOT THE

SIGNATURES OF ORME, THE PERSON ON WHOSE BEHALF THE CARD WAS SUBMITTED. MOREOVER, CLOUTIER, CONTRARY TO INSTRUCTIONS, PLACED HIS OWN SIGNATURE ON THE RECEIPT PORTION OF THE APPLICATION CARD CONFIRMING THE PAYMENT OF A ONE DOLLAR INITIATION FEE BY ORME WITH KNOWLEDGE THAT HE (CLOUTIER) HAD NOT COLLECTED THE INITIATION FEE. FURTHER, CLOUTIER, WHEN HE SUBMITTED THE MEMBERSHIP CARD ON BEHALF OF ORME TO BUCHANAN, FAILED TO MAKE ANY DISCLOSURE OF THE ABOVE MATTERS. WHILE THERE IS NO EVIDENCE OF ANY OTHER IRREGULARITIES WITH REGARD TO THE EVIDENCE OF MEMBERSHIP, THE BOARD IN PREVIOUS CASES HAS REFUSED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP WHERE A SINGLE DEFECTIVE CARD HAS BEEN SUBMITTED TO THE KNOWLEDGE OF A RESPONSIBLE UNION OFFICIAL. (SEE R.C.A. VICTOR COMPANY LIMITED CASE, CCH C.L.L.R. TRANSFER BINDER '49-'54, 917,067, C.L.S. 76-412. IT MAY BE THAT THE ONUS RELATING TO THE CONDUCT OF A SHOP STEWARD IS NOT AS EXACTING AS THAT WHICH RESTS UPON A PAID UNION OFFICIAL. IN THE INSTANT CASE, HOWEVER, CLOUTIER WAS GIVEN THE FULL RESPONSIBILITY FOR ORGANIZING THE EMPLOYEES FOR WHOM THE APPLICATION WAS MADE. FURTHER, CLOUTIER SIGNED AS COLLECTOR ON EVERY MEMBERSHIP CARD. IN THESE CIRCUMSTANCES AND VIEWED IN THE LIGHT OF HIS CONDUCT WITH RESPECT TO THE CARD SUBMITTED ON BEHALF OF ORME, DOUBT IS CAST ON ALL THE EVIDENCE OF MEMBERSHIP.

WE WOULD ALSO REFER TO THE FORM 9 FILED WITH THE BOARD OVER THE SIGNATURE OF HUGH BUCHANAN. PARAGRAPH 3 OF THE FORM READS AS FOLLOWS:

I HAVE MADE INQUIRIES CONCERNING THE COLLECTORS AND, ON THE BASIS OF SUCH INQUIRIES, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONIES PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES.

NO EXCEPTIONS ARE LISTED FOLLOWING THE ABOVE PARAGRAPH. WHILE WE ARE ENTIRELY SATISFIED THAT BUCHANAN HAD NO KNOWLEDGE CONCERNING THE CARD SUBMITTED ON BEHALF OF ORME, IT IS CLEAR FROM THE EVIDENCE THAT BUCHANAN FAILED TO MAKE ANY INQUIRIES OF CLOUTIER, WHO IS SHOWN AS THE COLLECTOR ON ALL THE MEMBERSHIP CARDS. AS A RESULT OF THIS FAILURE, BUCHANAN'S STATEMENT THAT HIS KNOWLEDGE IS BASED ON INQUIRIES IS IN FACT, NOT A TRUE STATEMENT. IN THE INSTANT CASE, THAT REMAINDER OF HIS DECLARATION PROVED TO BE FALSE. SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON FORM 9 IN CONSIDERING THE ADEQUACY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS MUST WEIGH HEAVILY AGAINST THE APPLICANT (SEE WEBSTER AIR EQUIPMENT CO. LTD. CASE, CCH C.L.L.R. TRANSFER BINDER



'55-'59, 716,110, C.L.S. 76-598).

IN VIEW OF THE CONDUCT OF CLOUTIER AND THE NON-DISCLOSURE OF MATERIAL FACTS IN THE FORM 9, THE BOARD IS NOT PREPARED TO PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION.

THE APPLICATION, ACCORDINGLY, IS DISMISSED."

BOARD MEMBER T. W. TEAGLE SAID:-

"I AGREE WITH THE DISMISSAL OF THIS APPLICATION ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP BEFORE THE BOARD. I WOULD NOT, HOWEVER, HAVE INCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE BARGAINING UNIT."

BOARD MEMBER G. RUSSELL HARVEY SAID:-

"I AGREE WITH THE UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

I DISSENT, HOWEVER, WITH REGARD TO THE DISMISSAL OF THE APPLICATION. THE IRREGULARITY AS TO ONE CARD IN THIS CASE, WHICH IN MY OPINION WAS INADVERTENT, IS NOT OF THE TYPE THAT SHOULD REFLECT ON THE VALUE OF THE REMAINING CARD EVIDENCE. FOR THE PURPOSE OF ASSESSING RESPONSIBILITY IN THIS MATTER, THE ACTIONS OF AN EMPLOYEE CANNOT BE EQUATED WITH THE ACTS OF A STAFF ORGANIZER OR UNION OFFICIAL.

AS A RESULT OF A FORMAL HEARING, THE BOARD NOW HAS THE BENEFIT OF FIRST-HAND SWORN TESTIMONY WHICH REMOVES ANY POSSIBLE DOUBT ON ALL THE REMAINING CARDS. ON THE QUESTIONED CARD IT IS WORTHY OF NOTE THAT NO ATTEMPT WAS MADE TO SIMULATE THE SIGNATURE AND THAT MONEY PAYMENT WAS MADE. IT IS EVIDENT THERE WAS NO DELIBERATE ATTEMPT TO DEFRAUD THE BOARD. I WOULD DISALLOW THIS CARD BUT GIVE FULL WEIGHT TO THE REMAINING CARDS.

ON THE ISSUE OF THE FORM 9, THIS FORM CONSTITUTES ADDITIONAL EVIDENCE FOR THE PURPOSE OF THE REGULAR PROCEDURE FOR CERTIFICATION BUT DOES NOT IN ANY WAY ALTER OR MODIFY THE FACTUAL VALUE OF THE CARDS AND RECEIPTS. THE SUBSEQUENT FORMAL INQUIRY BY THE BOARD OVERCAME ANY DIFFICULTY IN FORM 9 AND CLEARED UP ANY POSSIBLE DOUBT AS TO THE VALIDITY OF THE REMAINING CARDS.

THERE WAS A FAILURE HERE TO "INQUIRE", AS CALLED FOR BY FORM 9. THERE IS NO HISTORY OF SUCH FAILURE BY THIS UNION. ON THE BROAD RECORD, THIS UNION HAS VOLUNTARILY COMPLIED WITH BOTH THE TEXT AND SPIRIT OF THE BOARD'S RULES OF PROCEDURE. I AM SATISFIED WITH THE APPLICANT'S ATTITUDE AND THE ASSURANCE THAT A MORE EFFECTIVE CHECKING PROCEDURE WILL BE INTRODUCED IN THE FUTURE.

IN VIEW OF THE MAJORITY DECISION, I AM INCLINED TO BELIEVE THAT THE LANGUAGE OF FORM 9 AS TO "INQUIRIES MADE" MAY ENCOURAGE A RATHER PERFUNCTORY REPLY. THIS LANGUAGE MAY WELL BE CHANGED TO ASK WHAT INQUIRIES WERE MADE TO INSURE A MORE MEANINGFUL ANSWER.



AS A POLICY PRINCIPLE, I ENCOURAGE WHOLE-HEARTED AND VOLUNTARY ACCEPTANCE OF THE BOARD'S PROCEDURAL POLICIES. IN SO FAR AS THIS CASE IS CONCERNED, SINCE WE HAVE MORE THAN THE USUAL SWORN EVIDENCE AS TO THE VALIDITY OF THE REMAINING CARDS, I WOULD HAVE CERTIFIED THE APPLICANT."

9612-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SAPAWÉ GOLD MINES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE LIST FILED BY THE RESPONDENT CONTAINS THE NAMES OF TWENTY-NINE PERSONS ALL OF WHOM ARE INCLUDED IN THE BARGAINING UNIT DETERMINED BY THE BOARD IN PARAGRAPH 2 FOR THE PURPOSES OF THE COUNT. IN SUPPORT OF ITS APPLICATION, THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR NINETEEN PERSONS WHO ARE IN THE BARGAINING UNIT. THERE WAS ALSO FILED WITH THE BOARD A TWO PAGE DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) DATED NOVEMBER 5TH, 1964. THE HEADING ON THE FIRST PAGE OF THE PETITION READS:

THE REGISTRAR,  
ONTARIO LABOUR RELATIONS BOARD  
WE THE UNDERSIGNED EMPLOYEES OF SAPAWÉ GOLD MINES LIMITED, BOX 759, ATIKOKAN ONTARIO DO HEREBY OBJECT TO THE CERTIFICATION AS BARGAINING AGENT OF UNION AT THE SAPAWÉ GOLD MINES LIMITED MINE AS WE DO NOT WISH TO BE REPRESENTED BY A TRADE UNION FOR A PERIOD NOT LESS THAN TWELVE MONTHS FROM THIS DATE.

THE PETITION BEARS THE SIGNATURES OF TWENTY-FOUR PERSONS, FIFTEEN OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. OF THE FIFTEEN SIGNATURES TEN WERE IDENTIFIED BY WITNESSES WHO APPEARED IN SUPPORT OF THE PETITION. THE EIGHTH TO ELEVENTH SIGNATURES INCLUSIVE ON THE FIRST PAGE OF THE PETITION WERE NOT IDENTIFIED.

JEAN PAUL BEAUREGARD WHO IS EMPLOYED AS A MECHANIC BY THE RESPONDENT IDENTIFIED SIXTEEN SIGNATURES ON THE PETITION. BEAUREGARD TESTIFIED THAT HE KNEW THE APPLICANT WAS ORGANIZING THE EMPLOYEES OF THE RESPONDENT AND PROCEEDED TO PREPARE A PETITION EVEN BEFORE THE BOARD'S NOTICE OF THE APPLICATION WAS POSTED BY THE RESPONDENT. HE SPOKE TO MARGARET LEDERER, AN OFFICE EMPLOYEE, ABOUT THE PREPARATION OF THE PETITION ON THE AFTERNOON OF NOVEMBER 4TH AT APPROXIMATELY 3.00 P.M. DURING A COFFEE BREAK. HER HUSBAND HENNING LEDERER WHO IS AN ELECTRICIAN IN THE EMPLOY OF THE RESPONDENT WAS ALSO PRESENT DURING THIS CONVERSATION. AS A RESULT OF THIS CONVERSATION BEAUREGARD TESTIFIED THAT HE DRAFTED THE WORDING OF THE HEADING WHICH APPEARS ON THE PETITION AND TOOK IT TO MRS. LEDERER IN THE OFFICE AFTER SUPPER ON THE SAME EVENING. BEAUREGARD STATES THAT MRS. LEDERER CORRECTED THE GRAMMAR IN THE WORDING OF THE HEADING. BEAUREGARD TESTIFIED IN EXAMINATION BY THE BOARD THAT NO ONE ELSE WAS PRESENT IN THE OFFICE AT THAT TIME. (THE ONLY OTHER EMPLOYEE IN THE OFFICE IS MRS. HEATHER, THE WIFE OF THE MANAGER). BEAUREGARD DID SAY, HOWEVER, THAT THE "UNDERGROUND MAN" (WHO WAS LATER IDENTIFIED AS THE ENGINEER GEORGE

ANDERSON) MAY HAVE BEEN IN HIS OFFICE WHICH WAS ADJACENT TO THE MAIN OFFICE. IN CROSS-EXAMINATION, HOWEVER, BEAUREGARD ADMITTED THAT ANDERSON HAD ON THAT OCCASION TOLD MRS. LEDERER AND HIMSELF TO WHOM TO ADDRESS THE PETITION ON THE HEADING OF THE DOCUMENT. BEAUREGARD SAID THAT HE DID NOT SEE MRS. LEDERER ACTUALLY TYPE THE PETITION BUT THAT HE HAD RETURNED TO THE OFFICE AT APPROXIMATELY 10.30 P.M. AND HAD PICKED UP THE TYPED PETITION.

ALTHOUGH HIS EVIDENCE IS NOT ENTIRELY CLEAR, IT APPEARS THAT BEAUREGARD DID NOT COMMENCE TO GET SIGNATURES ON THE PETITION UNTIL THE EVENING OF NOVEMBER 5TH WHEN HE WAS WORKING OVERTIME. AT THAT TIME HE SECURED SIGNATURES FROM EMPLOYEES GOING ON THE NIGHT SHIFT. IT APPEARS FROM ALL THE EVIDENCE THAT HE GOT SEVEN SIGNATURES ON THE PETITION INCLUDING HIS OWN. BEAUREGARD SAID THAT HE GAVE THE PETITION TO ANOTHER EMPLOYEE TO TAKE TO THE DRY TO SECURE SIGNATURES OF EMPLOYEES WHO WERE GOING ON THE NIGHT SHIFT. THE EMPLOYEE RETURNED THE PETITION TO BEAUREGARD APPROXIMATELY FIFTEEN MINUTES LATER. ON THE BASIS OF THE EVIDENCE BEFORE US, IT APPEARS THAT THE EMPLOYEE TO WHOM BEAUREGARD HAD GIVEN THE PETITION SECURED THE FOUR SIGNATURES THAT WERE NOT IDENTIFIED ON THE FIRST PAGE OF THE PETITION DURING HIS ABSENCE. BEAUREGARD TESTIFIED IN CROSS-EXAMINATION THAT THERE USUALLY WAS A FOREMAN IN THE DRY WHEN EMPLOYEES WERE GOING ON SHIFT. ALTHOUGH HIS EVIDENCE RELATING TO DATES IS NOT ENTIRELY CLEAR, IT SEEMS THAT BEAUREGARD GOT MOST OF THE REMAINING SIGNATURES ON THE PETITION THE FOLLOWING DAY, NOVEMBER 6TH. AFTER SECURING ALL THE SIGNATURES ON THE PETITION BEAUREGARD'S EVIDENCE IS THAT HE TOOK IT TO THE OFFICE AND MRS. LEDERER TYPED THE ADDRESS ON THE ENVELOPE. BEAUREGARD SAID THAT HE MAILED THE PETITION TO THE BOARD ON NOVEMBER 7TH, AFTER WORKING HOURS.

BEAUREGARD TESTIFIED THAT ON NOVEMBER 5TH HE WENT TO THE OFFICE OF THE MANAGER A.F. HEATHER AND ASKED FOR HELP IN ORGANIZING AN EMPLOYEES' UNION. HIS EVIDENCE IS THAT HEATHER WOULD NOT TALK TO HIM. BEAUREGARD SAID THAT ON THE FOLLOWING AFTERNOON HE, FRANK VINKLE AND TWO OTHER EMPLOYEES WENT TO HEATHER'S OFFICE. BEAUREGARD TESTIFIED THAT THEY INDICATED TO HEATHER THAT THEY WANTED TO ESTABLISH THEIR OWN UNION. ACCORDING TO BEAUREGARD, VINKLE ASKED HEATHER IF HE WOULD CHECK-OFF DUES FOR SUCH A UNION. HEATHER REPLIED IN THE AFFIRMATIVE. HEATHER IN HIS EVIDENCE DENIED THAT HE HAD PROMISED ANY SUPPORT AND TESTIFIED THAT THERE HAD BEEN NO MENTION OF A CHECK-OFF OF DUES. IN SUBSEQUENT CROSS-EXAMINATIONS BEAUREGARD TESTIFIED THAT HEATHER LEFT THE IMPRESSION THAT HE WOULD CHECK-OFF DUES. BEAUREGARD STATED THAT HE HAD NO CONVERSATIONS WITH MANAGEMENT CONCERNING THE PETITION. HEATHER, HOWEVER, TESTIFIED THAT HE HAD PASSED BY BEAUREGARD AND BEAUREGARD TOLD HIM THAT HE HAD A PETITION AND THAT THERE WERE SIGNATURES ON IT.

FRANK VINKLE IS EMPLOYED BY THE RESPONDENT AS A HOISTMAN. ALTHOUGH HE WAS NOT CERTAIN OF THE DATES WE INFER FROM ALL THE EVIDENCE THAT HE FIRST SAW THE PETITION ON THE MORNING OF NOVEMBER 6TH WHEN HE CAME ON THE JOB. HE IDENTIFIED HIS OWN SIGNATURE ON THE PETITION (WHICH IS THE FIFTEENTH SIGNATURE) AS WELL AS THE TWO SUCCEEDING SIGNATURES. HIS EVIDENCE IS THAT ANOTHER EMPLOYEE HANDED THE PETITION TO HIM AND HE PASSED IT ON TO THE EMPLOYEES WHOSE SIGNATURES HE IDENTIFIED. VINKLE SAID THAT BEAUREGARD APPEARED AT THIS POINT AND TOOK THE PETITION (BEAUREGARD IDENTIFIED BOTH VINKLE'S SIGNATURE AND THE SECOND SIGNATURE IDENTIFIED BY VINKLE). VINKLE STATED THAT HE NEXT SAW THE PETITION AT APPROXIMATELY

3.30 P.M. THAT AFTERNOON IN THE HOIST. THE PETITION WAS IN THE POSSESSION OF BEAUREGARD WHO SHOWED IT TO VINKLE. VINKLE SAID HE CHECKED THE PETITION TO SEE HOW MANY MORE SIGNATURES HAD BEEN SECURED ON IT. IN CROSS-EXAMINATION VINKLE STATED THAT HE UNDERSTOOD THAT BEAUREGARD WAS GOING TO STRIKE OUT THE LAST ELEVEN WORDS ON THE HEADING OF THE PETITION, NAMELY, THE WORDS "FOR A PERIOD NOT LESS THAN TWELVE MONTHS FROM THIS DATE". VINKLE TESTIFIED THAT AT APPROXIMATELY 4.00 P.M. THE SAME AFTERNOON HE, BEAUREGARD AND TWO OTHER EMPLOYEES SPOKE WITH HEATHER IN HIS OFFICE. VINKLE SAID THAT HE ASKED HEATHER IF HE WOULD GIVE A CHECK-OFF IF THE EMPLOYEES FORMED THEIR OWN UNION. VINKLE'S EVIDENCE IS THAT HEATHER REPLIED THAT HE POSSIBLY WOULD GIVE THEM THE CHECK-OFF. IN CROSS-EXAMINATION, SUBSEQUENT TO HEATHER'S EVIDENCE, VINKLE TESTIFIED THAT HIS IMPRESSION WAS THAT HEATHER HAD AGREED TO THE CHECK-OFF. VINKLE STATED THAT THE FOREGOING CONVERSATION TOOK PLACE WHEN THE EMPLOYEES WERE IN THE OFFICE GIVING SPECIMEN SIGNATURES.

HENRY GAREAU WHO IS A STAFF MEMBER OF THE APPLICANT UNION TESTIFIED THAT ON THE MORNING OF NOVEMBER 4TH HE HAD TELEPHONED HEATHER WITH REGARD TO THE DISCHARGE OF AN EMPLOYEE AND ON THAT OCCASION HE INFORMED HEATHER THAT THE UNION HAD RECEIVED AN ACKNOWLEDGMENT FROM THE BOARD OF ITS APPLICATION FOR CERTIFICATION. ON THE EVENING OF NOVEMBER 5TH, SOME TIME BETWEEN 6.00 P.M. AND 7.00 P.M., GAREAU SAID THAT HE AND CLARENCE MORDEN, THE VICE-PRESIDENT OF LOCAL 3466 OF THE APPLICANT UNION, WENT INTO THE EMPLOYEES' BUNKHOUSE. A FEW MINUTES AFTER THEIR ARRIVAL HEATHER WALKED INTO THE BUNKHOUSE. SOME CONVERSATION TOOK PLACE BETWEEN GAREAU AND HEATHER WITH REGARD TO GAREAU'S RIGHT TO BE ON THE RESPONDENT'S PROPERTY. GAREAU'S EVIDENCE IS THAT ON LEAVING THE BUNKHOUSE HEATHER SAID HIM THAT THERE SHOULD BE NO UNION FOR A PERIOD OF TWELVE MONTHS. HEATHER TESTIFIED THAT HE TOLD GAREAU THAT ORGANIZING BY THE UNION AT THIS TIME WOULD NOT BE BENEFICIAL TO THE MEN OR THE COMPANY AND HE WAS SURPRISED THAT THE UNION HAD STARTED ORGANIZING SO QUICKLY. MORDEN'S EVIDENCE IS THAT HEATHER HAD SAID THAT THE UNION WOULD DO NEITHER THE MINE NOR THE MEN ANY GOOD AND THAT HE FELT THAT THEY DID NOT NEED A UNION FOR AT LEAST A YEAR IN ORDER TO GET STARTED. IN CROSS-EXAMINATION HEATHER STATED THAT HENNING LEDERER HAD COME TO HIM AND INFORMED HIM OF GAREAU'S AND MORDEN'S PRESENCE IN THE BUNKHOUSE.

GAREAU TESTIFIED THAT ON THE EVENING OF NOVEMBER 6TH HE HAD GONE TO THE MILL AND THE DRY TO SEE IF THE BOARD'S NOTICE OF THE APPLICATION HAD BEEN POSTED. GAREAU STATED THAT HE FOUND THAT FORM 5 HAD BEEN POSTED IN THE TWO LOCATIONS. ALONGSIDE THE FORM 5 IN BOTH PLACES WAS POSTED A DOCUMENT WHICH READS AS FOLLOWS:

SECTION 50 OF THE RULES OF PROCEDURE AND REGULATIONS THE ONTARIO LABOUR RELATIONS ACT INDICATES  
STATEMENT THAT THE EMPLOYEES DO NOT WISH TO BE REPRESENTED BY A TRADE UNION--  
MUST BE MADE IN WRITING, SIGNED BY THE EMPLOYEE, OR EACH MEMBER OF A GROUP OF EMPLOYEES, AND MUST BE IN THE HANDS OF THE ONTARIO LABOUR RELATIONS BOARD NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.



THE EVIDENCE OF HEATHER IS THAT HE FIRST KNEW OF THE UNION'S APPLICATION FOR CERTIFICATION WHEN HE RECEIVED A TELEPHONE CALL FROM GAREAU ON THE MORNING OF NOVEMBER 4TH CONCERNING A DISCHARGED EMPLOYEE. HE STATED THAT HE RECEIVED THE BOARD'S NOTICE OF THE APPLICATION AT APPROXIMATELY 6.30 P.M. THAT EVENING. HE POSTED A COPY OF FORM 5 AND THE DOCUMENT QUOTED IN PARAGRAPH 8 WHICH HE TESTIFIED HE PREPARED HIMSELF IN BOTH THE MILL AND THE DRY AT APPROXIMATELY 9.00 P.M. ON THE EVENING OF NOVEMBER 5TH.

IT APPEARS FROM ALL THE EVIDENCE THAT THE CONVERSATION BETWEEN HEATHER AND THE FOUR EMPLOYEES ON THE AFTERNOON OF NOVEMBER 6TH RELATING TO THE CHECK-OFF OF DUES OCCURRED AFTER ALL OR A RELEVANT NUMBER OF SIGNATURES OF PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT WERE SECURED. ACCORDINGLY, WE FIND THAT THE EVIDENCE REGARDING THIS CONVERSATION DOES NOT AFFECT THE WEIGHT TO BE GIVEN TO THE PETITION. FURTHER, ALTHOUGH THE BOARD DOES NOT GIVE ANY WEIGHT TO THE FOUR UNIDENTIFIED SIGNATURES ON THE FIRST PAGE OF THE PETITION, WE DO NOT FIND, IN ALL THE CIRCUMSTANCES, THAT THE ABSENCE OF EVIDENCE RELATING TO THE SECURING OF THESE SIGNATURES CASTS DOUBT ON THE SIGNATURES SUBSEQUENTLY SECURED ON THE PETITION.

WE DO FIND, HOWEVER, EVIDENCE OF SUPPORT OF THE PETITION BY THE RESPONDENT IN THE EVIDENCE OF BEAUREGARD IN CROSS-EXAMINATION WHICH MAKES IT APPARENT THAT NOT ONLY WAS GEORGE ANDERSON, WHO IS A MEMBER OF MANAGEMENT, IN HIS OFFICE AT THE TIME BEAUREGARD AND MRS. LEDERER DREW UP THE PETITION, BUT ANDERSON ASSISTED BY ADVISING THEM AS TO WHOM TO ADDRESS THE PETITION ON THE HEADING OF THE DOCUMENT. HAVING REGARD TO BEAUREGARD'S ORIGINAL TESTIMONY WHEN HE WAS EXAMINED BY THE BOARD, WE ARE DRIVEN TO THE CONCLUSION THAT HE INTENTIONALLY MISLED THE BOARD AS TO THE CIRCUMSTANCES SURROUNDING THE PREPARATION OF THE PETITION. WE WOULD ADD THAT IN ALL THE CIRCUMSTANCES WE FIND IT SIGNIFICANT THAT BEAUREGARD HAD NO HESITATION IN LEAVING THE PETITION IN THE OFFICE FOR A COUPLE OF HOURS TO BE TYPED WHILE A MEMBER OF MANAGEMENT, WHO WAS FULLY AWARE OF THE PREPARATION OF THE PETITION, REMAINED IN THE OFFICE.

BEAUREGARD TESTIFIED THAT HE PREPARED THE WORDING ON THE HEADING OF THE PETITION. IN LIGHT OF THE UNUSUAL REFERENCE TO "A PERIOD OF NOT LESS THAN TWELVE MONTHS FROM THIS DATE", THE CONVERSATION BETWEEN GAREAU, MORDEN AND HEATHER OUTSIDE THE BUNKHOUSE ON THE EVENING OF DECEMBER 5TH, AND THE DISCREPANCIES IN BEAUREGARD'S OWN TESTIMONY RELATING TO THE PREPARATION OF THE PETITION, WE DO NOT ACCEPT BEAUREGARD'S EVIDENCE THAT HE ALONE PREPARED THE WORDING OF THE PETITION.

THERE IS OTHER EVIDENCE WHICH, IN OUR OPINION, LENDS ITSELF TO THE INFERENCE THAT THE RESPONDENT GAVE AT LEAST TACIT SUPPORT TO THE PETITION. MORE SPECIFICALLY, ACCORDING TO THE TESTIMONY OF HEATHER, BEAUREGARD OF HIS OWN INITIATIVE TOLD HIM (HEATHER) THAT HE HAD A PETITION WITH SIGNATURES ON IT. ALSO BEAUREGARD DOES NOT APPEAR TO HAVE HESITATED IN SENDING ANOTHER EMPLOYEE TO THE DRY TO SECURE SIGNATURES ON THE PETITION, EVEN THOUGH HE ADMITTED IN CROSS-EXAMINATION THAT A FOREMAN WAS USUALLY PRESENT AT THE BEGINNING OF A SHIFT. THERE IS AS WELL EVIDENCE WHICH BY ITSELF DOES NOT IMPUGN THE PETITION, BUT WHEN VIEWED IN THE CONTEXT OF ALL THE EVIDENCE RAISES DOUBTS CONCERNING THE DETACHMENT OF THE RELATIONSHIP EXISTING BETWEEN THE RESPONDENT AND THE PETITIONERS. MORE PARTICULARLY,



THERE IS EVIDENCE THAT HENNING LEDERER IMMEDIATELY WENT TO HEATHER AND INFORMED HIM OF THE ARRIVAL OF GAREAU AND MORDEN ON THE PREMISES OF THE RESPONDENT ON THE EVENING OF NOVEMBER 5TH. WE FIND IT SIGNIFICANT THAT THE SAME HENNING LEDERER WAS PRESENT WHEN THE PREPARATION OF THE PETITION WAS ORIGINALLY DISCUSSED; THAT HIS SIGNATURE APPEARED SECOND ON THE PETITION FOLLOWING THAT OF BEAUREGARD, AND THAT HE IS THE HUSBAND OF MARGARET LEDERER WHO HELPED IN THE ACTUAL PREPARATION OF THE PETITION.

WE WOULD ADD THAT ALTHOUGH WE ARE NOT PREPARED TO FIND THAT HEATHER'S CONDUCT IN POSTING THE DOCUMENT (REFERRED TO IN PARAGRAPH 9) BESIDE FORM 5, IN ITSELF AMOUNTS TO MANAGEMENT SUPPORT FOR THE PETITION, IN OUR VIEW, IT WAS A DANGEROUS COURSE OF CONDUCT BY THE RESPONDENT WHICH MAY WELL, DEPENDING ON CIRCUMSTANCES, BE CONSIDERED MANAGEMENT PROVOCATION TO EMPLOYEES TO INSTIGATE OR SUPPORT A PETITION.

HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE PREPARATION AND CIRCULATION OF THE PETITION AND THE CONDUCT OF THE RESPONDENT, WE DO NOT ACCEPT THE PETITION AS TRULY REPRESENTING A VOLUNTARY EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT. THE BOARD ACCORDINGLY FINDS THAT THE PETITION DOES NOT WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

THE TWO EMPLOYEES WHO APPEARED AT THE HEARING IN SUPPORT OF THE PETITION TRAVELLED ALL THE WAY FROM ATIKOKAN AT THEIR OWN EXPENSE. THEY TOLD A STRAIGHTFORWARD STORY CONCERNING THE ORIGIN AND CIRCULATION OF THE PETITION. THEY ARE MINERS, NOT LAWYERS, AND WERE THEREFORE AT A DISTINCT DISADVANTAGE THROUGHOUT THE HEARING WHEN LEGAL TECHNICALITIES AND THE BOARD'S PROCEDURE WAS UNDER DISCUSSION.

ON THE OTHER HAND, THE UNION WAS REPRESENTED BY ONE OF THE MOST EXPERIENCED AND COMPETENT LABOUR RELATIONS COUNSELS IN CANADA. HE SUBJECTED THE TWO EMPLOYEES TO A LENGTHY AND SEARCHING CROSS-EXAMINATION IN AN ATTEMPT TO CONFUSE THEM AND THEREBY BREAK DOWN THEIR PREVIOUS EVIDENCE AND BRING ABOUT THE DISMISSAL OF THE PETITION.

I ACCEPT THE EVIDENCE IN CHIEF OF THE TWO EMPLOYEES AND WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE.

IN THE CONDUCT OF THIS CASE, THE BOARD ERRED IN NOT CONFORMING TO BOARD PRACTICE BY REQUIRING THE COUNSEL FOR THE APPLICANT TO MAKE AN ELECTION TO STAND OR FALL ON THE BOARD'S DECISION WHEN HE REQUESTED THE BOARD TO DISMISS THE PETITION ON THE EVIDENCE BEFORE IT. INSTEAD, THE BOARD RESERVED ITS DECISION ON THE MOTION OF THE COUNSEL FOR THE APPLICANT AND PROCEEDED TO HEAR EVIDENCE ADDUCED BY THE APPLICANT.

THE BOARD ALSO ERRED WHEN IT PERMITTED FURTHER CROSS-EXAMINATION BY THE COUNSEL FOR THE APPLICANT OF THE TWO EMPLOYEES REPRESENTING THE PETITIONERS AFTER BOTH PARTIES HAD COMPLETED PRESENTATION OF THEIR EVIDENCE AND COUNSEL FOR THE APPLICANT HAD COMMENCED HIS ARGUMENT. THE BOARD SHOULD HAVE CONDUCTED ITS OWN EXAMINATION OF THE SAID EMPLOYEES UNDER SUCH CIRCUMSTANCES.

FOR THESE ADDITIONAL REASONS, I WOULD HAVE EXERCISED THE BOARD'S DISCRETION AND ORDERED A REPRESENTATION VOTE ENTIRELY APART FROM ANY WEIGHT GIVEN TO THE PETITION."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"WE HAVE HAD AN OPPORTUNITY TO READ THE DISSENTING OPINION BY BOARD MEMBER H.F. IRWIN. IN ARRIVING AT OUR DECISION WE CAREFULLY CONSIDERED THE VIEWS WHICH HE HAS EXPRESSED. OUR DECISION WAS BASED ON ALL THE EVIDENCE BEFORE US IN THIS MATTER."

9725-64-R: GENERAL TRUCK DRIVERS LOCAL 879 (APPLICANT) V. ZENITH ELECTRIC SUPPLY (ONTARIO) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AT THE HEARING OF THE BOARD ON DECEMBER 14TH, COUNSEL FOR THE RESPONDENT REQUESTED THAT THE BOARD EXTEND THE TERMINAL DATE OF DECEMBER 7TH, 1964 FIXED IN THIS MATTER SINCE FORM 5 "NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION" HAD NOT BEEN POSTED UNTIL BETWEEN 4:00 P.M. AND 5:00 P.M. ON FRIDAY, DECEMBER 4TH, 1964.

THE EVIDENCE BEFORE THE BOARD IS THAT THE FOUR EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT WORKED AT THE PREMISES OF THE RESPONDENT ON THE EVENING OF FRIDAY, DECEMBER 4TH AND SATURDAY MORNING, DECEMBER 5TH, AFTER THE POSTING OF THE FORM 5. HAVING REGARD TO THE SMALL NUMBER OF EMPLOYEES IN THE UNIT AND THE FACT THAT THE EMPLOYEES HAD OVER THREE DAYS AFTER THE POSTING OF FORM 5 IN WHICH TO FILE A PETITION WITH THE BOARD (BY REGISTERED MAIL IF NECESSARY) EXPRESSING OPPOSITION TO THIS APPLICATION, IF SUCH WAS THEIR DESIRE, WE ARE OF THE OPINION THAT THERE IS NO REASON TO EXTEND THE TERMINAL DATE. THE REQUEST OF COUNSEL FOR THE RESPONDENT, ACCORDINGLY, IS DENIED."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION (FORM 5) WAS POSTED ON THE NOTICE BOARD ON THE EMPLOYER'S PREMISES BETWEEN 4 P.M. AND 5 P.M. ON FRIDAY, DECEMBER 4TH. THE TERMINAL DATE SET BY THE REGISTRAR WAS MONDAY, DECEMBER 7TH. I WOULD HAVE EXTENDED THE TERMINAL DATE TO THURSDAY, DECEMBER 10TH, IN ORDER TO GIVE THE EMPLOYEES THE NORMAL PERIOD OF TIME USUALLY AFFORDED THEM TO MAKE REPRESENTATIONS, IF ANY, TO THE BOARD IN RESPECT OF THE APPLICATION."

9741-64-R: WHEATLEY MANUFACTURING LIMITED EMPLOYEES ASSOCIATION (APPLICANT)  
V. WHEATLEY MANUFACTURING LIMITED (RESPONDENT). (65 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT IS AN ASSOCIATION WHOSE MEMBERS ARE EMPLOYEES OF THE RESPONDENT. THE DOCUMENT COMPRISING THE CONSTITUTION OF THE APPLICANT IS A "MEMORANDUM OF ARTICLES OF ASSOCIATION", DATED THE 14TH DAY OF OCTOBER, 1964, AND EXECUTED BY SOME SIXTY PERSONS. THIS DOCUMENT SETS FORTH, AMONG THE PURPOSES OF THE APPLICANT, COLLECTIVE BARGAINING ON BEHALF OF EMPLOYEES OF THE RESPONDENT WHICH IS DESCRIBED WITH REFERENCE TO ITS STREET ADDRESS. THERE IS NO EVIDENCE OF ANY EMPLOYER PARTICIPATION IN THE FORMATION OR ADMINISTRATION OF THE APPLICANT, NOR OF ANY FINANCIAL OR OTHER SUPPORT CONTRIBUTED BY THE EMPLOYER, NOR DOES THE APPLICANT DISCRIMINATE AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN. THE BOARD NOTES THAT THE CONSTITUTION OF THE APPLICANT CONTAINS NO PROVISION WITH RESPECT TO WHAT PERSONS MAY BE ADMITTED TO MEMBERSHIP. THERE IS NO PROVISION WITH RESPECT TO THE ADDITION OF NEW MEMBERS OR THE RETIREMENT, DEATH OR OTHER CHANGE IN STATUS OF ITS PRESENT MEMBERS. NO ARGUMENT WAS HEARD ON THIS POINT AND THE BOARD DRAWS NO CONCLUSION IN THIS REGARD. IN VIEW OF THE DISPOSITION MADE OF THE PRESENT CASE ON OTHER GROUNDS, THE BOARD MAKES NO FINDING AS TO THE APPLICANT'S STATUS AS A TRADE UNION.

THE BOARD HAS CERTAIN WELL ESTABLISHED REQUIREMENTS AS TO EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF APPLICATIONS FOR CERTIFICATION. THESE REQUIREMENTS INCLUDE (WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL): THAT APPLICATIONS FOR MEMBERSHIP BE MADE IN WRITING, SIGNED BY THE PERSON SAID TO BE A MEMBER OF THE APPLICANT; THAT EACH PERSON SAID TO BE A MEMBER OF THE APPLICANT PAY TO THE APPLICANT, ON HIS OWN BEHALF, AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF THE PRESCRIBED INITIATION FEE OR MONTHLY DUES OF THE APPLICANT; THAT THIS MONEY PAYMENT BE CONFIRMED BY A WRITTEN RECEIPT SIGNED BY THE PERSON WHO COLLECTED THE MONEY AND COUNTERSIGNED BY THE PERSON WHO PAID THE MONEY, AND THAT THIS EVIDENCE BE SUPPORTED BY A DECLARATION IN FORM 9 WITH RESPECT TO THE COLLECTION OF THE MONEY. BY SECTION 50 (1) OF THE BOARD'S RULES OF PROCEDURE EVIDENCE AS TO REPRESENTATION MUST BE IN WRITING AND BY SECTION 50 (2) OF THE RULES, THE BOARD IS PROHIBITED FROM ACCEPTING ORAL EVIDENCE OF MEMBERSHIP EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE.

IN THE INSTANT CASE THE ONLY WRITTEN EVIDENCE OF MEMBERSHIP CONSISTS OF THE "MEMORANDUM OF ARTICLES OF ASSOCIATION" REFERRED TO ABOVE. BY THAT DOCUMENT THE SIGNATORIES DECLARED THEMSELVES TO BE ASSOCIATED IN A JOINT AND COMMON VENTURE AND AGREED TO BE AND TO BECOME MEMBERS OF THE APPLICANT. THERE WAS NO WRITTEN EVIDENCE OR ANY MONEY PAYMENT BY ANY PERSON ALLEGED TO BE A MEMBER OF THE APPLICANT. THERE WAS CONSEQUENTLY NO COUNTERSIGNATURE BY ANY PERSON SAID TO BE A MEMBER OF THE APPLICANT, AND THE FORM 9 WHICH WAS FILED CONTAINED NO DECLARATION WITH RESPECT TO THE COLLECTION OF ANY MONEY. IT IS CLEAR THAT THIS EVIDENCE DOES NOT MEET THE STANDARDS WHICH THE BOARD HAS CONSISTENTLY REQUIRED TO BE MET AND ACCORDINGLY THIS APPLICATION MUST BE DISMISSED.

AT THE HEARING IN THIS MATTER THERE WAS CERTAIN ORAL EVIDENCE PRESENTED AS TO MONEY PAYMENTS. ASSUMING (BUT WITHOUT DECIDING THE POINT) THAT THIS EVIDENCE COULD BE ACCEPTED NOTWITHSTANDING SECTION 50 (2) OF THE BOARD'S RULES OF PROCEDURE, THE EVIDENCE WAS TO THE EFFECT THAT PAYMENT WAS CONDITIONAL UPON THE EVIDENCE WAS TO THE EFFECT THAT PAYMENT WAS CONDITIONAL UPON THE SUCCESS OF THIS APPLICATION, IT HAVING BEEN AGREED THAT EACH MEMBER WOULD BE REFUNDED HIS PRO RATA SHARE OF THE MONIES COLLECTED AFTER DEDUCTING CERTAIN COSTS INCURRED BY THE ASSOCIATION IN THE EVENT THAT THIS APPLICATION DID NOT SUCCEED. IN THE CASE OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND THE DE LAVAL Co. LTD., (1952) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 49-54, ¶17, 031; 2 C.L.C. 76-331, THE BOARD'S DECISION READ IN PART AS FOLLOWS:-

"THE BOARD HAS STATED ON MANY OCCASIONS THAT A PAYMENT CONDITIONED ON THE OUTCOME OF AN APPLICATION FOR CERTIFICATION IS NOT ACCEPTABLE AS EVIDENCE OF MEMBERSHIP IN SUPPORT OF THAT APPLICATION. SUCH A PAYMENT IS NOT EVIDENCE OF MEMBERSHIP; AT BEST, IT IS EVIDENCE OF A WILLINGNESS TO BECOME A MEMBER IN A CERTAIN EVENTUALITY."

9761-64-R: SHOPMEN'S LOCAL UNION No. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFFILIATED WITH THE AFL-CIO C.L.C.) (APPLICANT) V. HURON STEEL FABRICATORS (LONDON) LIMITED (RESPONDENT). (15 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN A GROUP OF EMPLOYEES HAVE FILED A DOCUMENT IN OPPOSITION TO THIS APPLICATION.

DURING THE BOARD'S EXAMINATION INTO THE ORIGATION AND CIRCULATION OF THE DOCUMENT FILED BY THE EMPLOYEES THE EMPLOYEE WHO WAS TESTIFYING IN SUPPORT OF THE DOCUMENT STATED THAT HE HAD CONVERSATIONS CONCERNING THE UNION WITH MR. TOTTH WHO WAS AT THE TIME THE PRODUCTION MANAGER OF THE RESPONDENT AND WAS THEN AND STILL IS A SHAREHOLDER OF THE RESPONDENT. IT APPEARS THAT MR. TOTTH ADVISED THE WITNESS THAT HE WANTED THE APPLICANT UNION TO REPRESENT THE SHOP EMPLOYEES OF THE RESPONDENT AND TO THIS END GAVE THE WITNESS APPLICATION FOR MEMBERSHIP FORMS IN THE APPLICANT TO BE COMPLETED BY THE RESPONDENT'S EMPLOYEES. THE WITNESS FURTHER TESTIFIED THAT HE CAUSED THE MAJORITY OF THE EMPLOYEES TO SIGN THE MEMBERSHIP DOCUMENTS AND ADVISED THEM THAT MR. TOTTH SAID THAT MANAGEMENT WAS IN FAVOUR OF THEIR JOINING THE UNION.

IT FURTHER APPEARS FROM THE EVIDENCE THAT MR. TOTTH WAS FROM HUNGARY AS WERE TEN OF THE RESPONDENT'S FIFTEEN EMPLOYEES. IT FURTHER APPEARS THAT MR. TOTTH ANTICIPATED HIS DISMISSAL AS AN OFFICER OF THE COMPANY, WHICH TOOK PLACE ON DECEMBER 3RD, 1964, AND SOME TWO WEEKS BEFORE HE WAS DISMISSED HE SUPPORTED THE APPLICANT'S ORGANIZATIONAL CAMPAIGN AND ADVISED THE TEN EMPLOYEES WHO CAME ORIGINALLY FROM HUNGARY THAT THEY REQUIRED THE UNION IN ORDER TO PROTECT THEIR JOBS BECAUSE IF MR. TOTTH WAS DISMISSED ALL OF THE EMPLOYEES OF HUNGARIAN EXTRACTION WOULD BE LIKEWISE DISMISSED.



NONE OF THIS EVIDENCE WAS REFUTED BY THE APPLICANT OR THE RESPONDENT NOR DID THE APPLICANT MAKE ANY REPRESENTATIONS AS TO WHAT EFFECT SHOULD BE GIVEN TO THIS EVIDENCE.

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE MAJORITY OF THE EMPLOYEES WHOM THE APPLICANT CLAIMS AS MEMBERS JOINED THE APPLICANT AT THE BEHEST OF A RESPONSIBLE OFFICER WHO IS ALSO ONE OF THE SHAREHOLDERS OF THE RESPONDENT AND THAT UNDUE INFLUENCE WAS BROUGHT TO BEAR ON SUCH EMPLOYEES BY THE RESPONDENT'S OFFICER IN ORDER TO CAUSE THEM TO JOIN THE APPLICANT UNION. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE RESPONDENT THROUGH ITS PRODUCTION MANAGER HAS CONTRIBUTED SUPPORT TO THE APPLICANT CONTRARY TO SECTION 10 OF THE LABOUR RELATIONS ACT, AND THE BOARD ACCORDINGLY REFUSES TO CERTIFY THE APPLICANT.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

INDEXED ENDORSEMENTS - TERMINATION

9472-64-R: THOMAS M. FITZPATRICK (APPLICANT) v. LOCAL 450, PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA WITH HEADQUARTERS IN HAWKINS COUNTY, TENNESSEE, U.S.A. (RESPONDENT) v. CONTINENTAL CAN COMPANY OF CANADA, LIMITED (PAPER DIVISION) (INTERVENER). (GRANTED). (75 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION BY THE APPLICANT FOR DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT UNION.

EARLIER APPLICATIONS FOR A DECLARATION TERMINATING BARGAINING RIGHTS MADE BY AN EMPLOYEE OF THE INTERVENER COMPANY WERE DISMISSED BY THE BOARD ON MAY 4TH AND JUNE 25TH, 1964. IN THE CASE OF THE FIRST APPLICATION THE BOARD'S ENDORSEMENT READ IN PART AS FOLLOWS:-

THE BOARD IS SATISFIED WITH THE EVIDENCE RELATING TO THE ORIGINATION OF THE DOCUMENT FILED BY THE APPLICANT. HOWEVER, THERE IS AN ONUS ON THE APPLICANT TO SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION PURSUANT TO THE PROVISION OF SECTION 43 (3) OF THE LABOUR RELATIONS ACT.

BECAUSE OF THE CONFUSION OF THE WITNESSES CALLED BY THE APPLICANT WITH RESPECT TO WHICH SIGNATURES THEY WITNESSED, AND THE CONTRADICTORY NATURE OF THEIR EVIDENCE, WHILE THE BOARD MAY BE SATISFIED THAT SOME OF THE EMPLOYEES IN THE BARGAINING UNIT VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF CONTINENTAL CAN COMPANY OF CANADA LIMITED (PAPER DIVISION) IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

A REQUEST BY THE APPLICANT FOR RECONSIDERATION OF THIS DECISION WAS DENIED BY THE BOARD ON MAY 14TH, 1964.

IN THE CASE OF THE SECOND APPLICATION, THE BOARD'S ENDORSEMENT READ IN PART AS FOLLOWS:-

THE FACTS IN THE INSTANT CASE, IN ALL RELEVANT RESPECTS, ARE THE SAME AS THOSE IN THE CANADIAN SEALRIGHT CO. LTD. CASE (1959) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1955-59, ¶16,157; C.L.S. 76-665. IN THAT CASE THE BOARD REAFFIRMED THE PRINCIPLE ESTABLISHED IN THE TRINIDAD LEASEHOLDS (CANADA) LIMITED CASE (1949) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-54, ¶17,005; D.L.S. 7-2107 THAT WHERE THERE IS A CURRENT AND ACTIVE BARGAINING RELATIONSHIP, A SECOND APPLICATION BY THE SAME APPLICANT SHOULD NOT BE ENTERTAINED BY THE BOARD UNTIL A REASONABLE OPPORTUNITY HAS BEEN GIVEN TO THE PARTIES TO THE COLLECTIVE AGREEMENT TO BARGAIN FOR ITS RENEWAL. IN THE CANADIAN SEALRIGHT CO. LTD. CASE (SUPRA) THE BOARD DESCRIBED "CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP" AS THE ACTIVITY OF THE UNION IN BARGAINING AND NOT THE DEGREE OF SUPPORT WHICH THE UNION MAY ENJOY AMONG THE EMPLOYEES IN THE BARGAINING UNIT.

IN OUR OPINION, THE INSTANT CASE, THE RESPONDENT HAS NOT HAD A REASONABLE OPPORTUNITY SINCE THE FINAL DISPOSITION OF THE FIRST APPLICATION AND THE FILING OF THE SECOND APPLICATION TO BARGAIN WITH THE INTERVENER COMPANY.

FOLLOWING DISMISSAL OF THE SECOND APPLICATION, THE RESPONDENT TRADE UNION CALLED A MEETING HELD ON JULY 12TH, 1964, FOR THE PURPOSE OF SELECTING A NEGOTIATING COMMITTEE. AS SOON AS THAT MEETING WAS CONVENED MR. HENRY DARRELL, AN EMPLOYEE OF THE INTERVENER COMPANY AND THE APPLICANT IN THE FIRST TWO APPLICATIONS, MOVED THE ADJOURNMENT OF THE MEETING. MR. DARRELL STATED THAT THE BOARD'S DECISION OF JUNE 25TH WAS BEING "APPEALED" AND URGED THAT NOTHING SHOULD BE DONE UNTIL THE OUTCOME OF THAT APPEAL SHOULD BE KNOWN. THE MOTION WAS CARRIED AND THE MEETING ADJOURNED. IN FACT NO SUCH "APPEAL" OR REQUEST FOR REVIEW OF THE BOARD'S DECISION WAS EVER MADE.

ON JULY 14TH, THE RESPONDENT TRADE UNION WROTE THE INTERVENER COMPANY STATING THAT NO PURPOSE WOULD BE SERVED BY PROCEEDING WITH NEGOTIATIONS UNTIL THE APPEAL HAD BEEN DEALT WITH BY THE LABOUR RELATIONS BOARD.

ON JULY 23RD MR. O'LEARY, SOLICITOR FOR THE PRESENT APPLICANT, WROTE TO THE BOARD WITH RESPECT TO THESE PROCEEDINGS. THIS LETTER, HOWEVER, CONTAINS NO REQUEST FOR REVIEW OF ANY DECISION OF THE BOARD.

SOME TIME AFTER THIS, MR. ARNOLD, SOLICITOR FOR THE RESPONDENT, MADE CERTAIN INQUIRIES AND ADVISED THE RESPONDENT, ACCORDING TO THE EVIDENCE OF MR. STEELE, ITS REPRESENTATIVE, THAT "A LETTER HAD BEEN RECEIVED BY THE BOARD AND SOME SORT OF APPEAL WAS IN PROCESS".

ON SEPTEMBER 14TH, 1964, MR. ARNOLD WROTE TO THE BOARD MAKING INQUIRIES WITH RESPECT TO THE REQUEST FOR REVIEW OF THE BOARD'S DECISION OF JUNE 25TH, AND ON SEPTEMBER 16TH THE REGISTRAR OF THE BOARD WROTE TO MR. ARNOLD ADVISING HIM THAT NO SUCH REQUEST HAD BEEN RECEIVED.

ON SEPTEMBER 30TH, 1964, THIS APPLICATION WAS MADE. FOLLOWING

RECEIPT OF A COPY OF THE APPLICATION, THE RESPONDENT TRADE UNION CONTACTED THE INTERVENER COMPANY AND A MEETING WAS HELD BETWEEN THE RESPONDENT AND THE INTERVENER IN THE WEEK PRECEDING THE HEARING OF THIS APPLICATION.

THE QUESTION BEFORE THE BOARD IS WHETHER, IN THE CIRCUMSTANCES, THE RESPONDENT AND THE INTERVENER HAVE HAD A REASONABLE OPPORTUNITY TO BARGAIN. AS ALMOST FOUR MONTHS PASSED FROM THE BOARD'S DISMISSAL OF THE SECOND APPLICATION UNTIL THE HEARING OF THIS APPLICATION IT WOULD APPEAR THAT THERE HAS BEEN AMPLE TIME FOR NEGOTIATIONS TO HAVE BEEN CARRIED ON. HOWEVER, THE RESPONDENT UNION WAS UNDER THE MISTAKEN IMPRESSION THAT THERE HAD BEEN A REQUEST FOR A REVIEW OF THE BOARD'S DECISION OF JUNE 25TH AND THIS IMPRESSION WAS CREATED BY THE MISLEADING STATEMENT OF MR. DARRELL, ADDRESSED TO THE MEETING OF JULY 12TH. THIS STATEMENT APPEARS TO HAVE BEEN A DELIBERATE FALSIFICATION, MADE FOR THE PURPOSE OF HINDERING THE RESPONDENT TRADE UNION IN ITS EFFORTS TO NEGOTIATE. CONDUCT OF THIS SORT MUST BE CONDEMNED. CAN IT, HOWEVER, BE SAID THAT, BECAUSE OF THIS IMPRESSION HELD BY THE RESPONDENT, THERE HAS BEEN NO REAL OPPORTUNITY TO BARGAIN? IN THIS REGARD THERE ARE THREE MATTERS TO BE CONSIDERED:

FIRST, THE BELIEF THAT THE DECISION OF JUNE 25TH WAS UNDER REVIEW WAS NOT WELL FOUNDED. THERE IS NO EVIDENCE AS TO WHAT SORT OF INQUIRIES WERE MADE OF THE BOARD ON BEHALF OF THE RESPONDENT, BUT IT IS CLEAR THAT THESE MUST HAVE BEEN OF AN INFORMAL AND INDEED VAGUE NATURE. FURTHERMORE, THESE INQUIRIES WERE NOT MADE PROMPTLY. ALTHOUGH MR. DARRELL'S STATEMENT WAS MADE ON JULY 12TH, NO ATTEMPT TO CHECK IT WAS MADE BY THE RESPONDENT UNTIL AFTER JULY 23RD. OF COURSE, IF THERE HAD BEEN ANY REQUEST FOR REVIEW AND THERE WERE ANY CASE FOR THE RESPONDENT TO ANSWER, IT WOULD HAVE BEEN SO ADVISED BY THE BOARD.

SECOND, EVEN IF THERE HAD BEEN A REQUEST FOR REVIEW OF THE BOARD'S DECISION, THIS WOULD NOT, IN THE CIRCUMSTANCES, APPEAR TO BE AN ADEQUATE REASON FOR SUSPENDING NEGOTIATIONS. THIS IS SO PARTICULARLY WHERE A SUBSTANTIAL PERIOD OF TIME ELAPSES WITHOUT ANY ACTION BEING TAKEN. IN THIS CONNECTION IT IS WORTH REMARKING THAT THE RESPONDENT WAS QUICK TO COMMENCE NEGOTIATIONS WITH THE INTERVENER AFTER THE PRESENT APPLICATION WAS MADE - WHILE THERE WAS IN FACT A REAL ISSUE PENDING BEFORE THE BOARD.

THIRD, AFTER THE 16TH OF SEPTEMBER WHEN THE RESPONDENT KNEW WITHOUT DOUBT THAT NO REQUEST FOR REVIEW OF THE BOARD'S DECISION HAD BEEN MADE THERE WAS NO EXCUSE FOR FAILURE TO COMMENCE NEGOTIATIONS IMMEDIATELY. WHILE IT MAY BE THAT ONE WOULD NOT EXPECT A COLLECTIVE AGREEMENT TO BE MADE WITHIN A TWO WEEK PERIOD, ONE WOULD EXPECT THE RESPONDENT AT LEAST TO COMMUNICATE WITH THE INTERVENER COMPANY WITH RESPECT TO COMMENCING TO BARGAIN. AGAIN IT IS WORTH REMARKING THAT THE RESPONDENT TRADE UNION DID NOT STIR ITSELF UNTIL AFTER THE PRESENT APPLICATION WAS MADE. APPROXIMATELY ONE MONTH PASSED BETWEEN THE TIME THE RESPONDENT KNEW FOR A CERTAINTY THERE WAS NO APPEAL OF THE BOARD'S DECISION, AND THE TIME A MEETING WAS HELD WITH THE COMPANY.

ALTHOUGH MR. DARRELL'S FALSE STATEMENT THAT AN APPEAL WAS BEING TAKEN FROM THE BOARD'S DECISION ON THE SECOND APPLICATION HAS CREATED UNCERTAINTY IN THE MINDS OF ALL PARTIES AND HAS, IN EFFECT, REDUCED



THE PERIOD DURING WHICH BARGAINING COULD BE EXPECTED TO HAVE TAKEN PLACE, NEVERTHELESS, IN ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THERE HAS BEEN, IN THE FOUR MONTHS FOLLOWING ITS DECISION OF JUNE 25TH, ADEQUATE OPPORTUNITY FOR THE RESPONDENT AND THE INTERVENER AT LEAST TO HAVE COMMENCED BARGAINING IN EARNEST. NO SUCH COMMENCEMENT HAS BEEN MADE, AND HAVING IN MIND ALL THE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT THIS APPLICATION IS TIMELY..."

2617-64-R: EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY (APPLICANT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT UNION IN THE PROCEEDINGS BEFORE THE BOARD IN THE INSTANT CASE WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED IN THIS APPLICATION ON AUGUST 26, 1964. ON SEPTEMBER 2, 1964, THE BUSINESS AGENT OF THE UNION, MR. GERALD VANDEZANDE, SENT TO THE EMPLOYER A LETTER PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT, GIVING NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. THE LETTER CITED IN FULL THE PROVISIONS OF SECTION 12 OF THE ACT, WHICH IMPOSES ON THE PARTIES THE OBLIGATION TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT; IT THEN ADDED THAT THE UNION WOULD BE SUBMITTING ITS "CONTRACT PROPOSALS" IN A FEW DAYS AND STATED "WE WOULD APPRECIATE HEARING WHEN IT IS CONVENIENT FOR YOU TO MEET". NO REPLY TO THIS NOTICE WAS RECEIVED BY THE UNION. ON SEPTEMBER 10, THE UNION SENT ANOTHER LETTER TO THE COMPANY BY REGISTERED MAIL, ENCLOSING A COPY OF THE "CONTRACT PROPOSALS" AND REQUESTING THAT THE EMPLOYER ADVISE IT "BY RETURN MAIL WHEN IT WILL BE CONVENIENT FOR YOU TO MEET IN KEEPING WITH ARTICLE 12 OF THE ACT". THIS LETTER WAS RETURNED TO THE UNION BY THE POST OFFICE WITH THE NOTATION THAT IT HAD BEEN REFUSED BY THE ADDRESSEE. THE UNION THEN INSTRUCTED ITS SOLICITOR, MR. B.A. KELSEY, TO COMMUNICATE WITH THE EMPLOYER AND ON SEPTEMBER 15 MR. KELSEY WROTE TO THE COMPANY, TO THE ATTENTION OF MR. MALTARP. THE SOLICITOR'S LETTER READ IN PART AS FOLLOWS: "YOU SAW FIT TO IGNORE THE NOTICE SENT TO YOU ON SEPTEMBER 3 AND IN ADDITION YOU REFUSED TO ACCEPT THE CONTRACT PROPOSALS WHICH WERE FORWARDED TO YOU BY REGISTERED MAIL ON SEPTEMBER 10TH". THE LETTER ALSO DEALT WITH MATTERS NOT GERMANE TO THIS APPLICATION AND CONCLUDED WITH A REQUEST THAT THE COMPANY COMPLY WITH SECTION 12 OF THE ACT AND "MEET WITH THE ASSOCIATION FOR THE PURPOSE OF CONCLUDING A COLLECTIVE AGREEMENT" AND ASKED FOR AN IMMEDIATE REPLY. THE COMPANY'S LETTER IN REPLY, DATED SEPTEMBER 16, 1964, OVER THE SIGNATURE OF MR. GEORGE MALTARP, IDENTIFIED THEREIN AS VICE-PRESIDENT, READS IN PART AS FOLLOWS:

YOU CLAIM THAT WE ON SEPT 3RD RECEIVED A NOTICE FROM THE ASSOCIATION PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT FOR DESIRE TO BARGAIN. WE RECEIVED SUCH A NOTICE BUT IT IS DATED SEPT 64 AND IT WAS RECEIVED IN OUR OFFICE ON 8 SEP 64 ....

YOU CLAIM WE HAVE IGNORED A NOTICE SENT TO US ON SEPT 10TH. WE HAVE BY NO MEANS IGNORED THIS NOTICE. WE ARE JUST SITTING BACK WAITING TO BE



CONTACTED BY THE CHRISTIAN LABOUR ASSOCIATION AND NO SUCH CONTACT HAS BEEN MADE, UNLESS THE REGISTERED MAIL SENT TO US ON SEPT. 10TH OF SUCH NATURE. IF THIS IS THE CASE THEN LET ME INFORM YOU THAT WE HAVE NO INTENTION TO NEGOTIATE WITH ANY UNION, CERTIFIED OR UNCERTIFIED, IN THIS PLANT, BY MAIL. ANYONE WANTING TO NEGOTIATE A CONTRACT WITH US WILL KINDLY MEET WITH THE MANAGEMENT WHEN THEY SEE FIT IN NO OTHER WAY, AND SURELY YOU CANNOT CLAIM THIS IS A BREACH OF THE LAW.

YOU CLAIM THAT IT IS STILL YOUR CLIENT'S INTENTION TO MEET WITH US AND I MUST CERTAINLY SUGGEST THAT THEY GET MOVING, AS WE HAVE NEVER REFUSED TO MEET WITH ANYONE.

. . . WE ARE STILL WAITING FOR THE UNION TO CONTACT US IN PERSON AS FAR AS AN AGREEMENT IS CONCERNED, AND SO FAR THEY HAVE NOT MADE A MOVE IN THIS DIRECTION.

HOWEVER, THE COMPANY DID NOT INDICATE WHEN ITS REPRESENTATIVES WOULD BE PREPARED TO MEET WITH THE UNION. THE UNION'S SOLICITOR, IN ACKNOWLEDGING THE COMPANY'S LETTER OF SEPTEMBER 16, SUGGESTED A MEETING AT THE PREMISES OF THE COMPANY ON TUESDAY, SEPTEMBER 22 AT 11.00 A.M. OR, IN THE ALTERNATIVE, TUESDAY, SEPTEMBER 29 AT 11.00 A.M. MR. GEORGE MALTARP INFORMED THE SOLICITOR THAT TUESDAY, SEPTEMBER 22 AT 11.00 A.M. WAS SUITABLE BUT THAT ACCOMMODATION FOR THE MEETING WOULD HAVE TO BE PROVIDED BY THE UNION, AS THERE WERE NO FACILITIES FOR SUCH A MEETING AT THE PLANT. MR. VANDEZANDE MADE ARRANGEMENTS FOR A ROOM AT THE WHITE TOWERS MOTEL AND NOTIFIED MR. MALTARP WHO AGREED TO BE PRESENT.

THE MEETING OF SEPTEMBER 22 WAS ATTENDED BY MR. VANDEZANDE AND BY MR. JAN ZUIDERVELD, WHO HAD BEEN APPOINTED A MEMBER OF THE BARGAINING COMMITTEE, ON BEHALF OF THE UNION, AND BY MR. MALTARP AS WELL AS BY MRS. WOODS, WHOM THE FORMER INTRODUCED AS A SECRETARY, ON BEHALF OF THE COMPANY. THE MEETING WAS ALSO ATTENDED BY A GROUP OF EMPLOYEES WHO WERE OPPOSED TO THE UNION. THIS GROUP INCLUDED MR. LEO ZWART, WHO SIGNED THE APPLICATION ON BEHALF OF THE APPLICANTS AND WAS THE SPOKESMAN FOR THE APPLICANTS AT THE HEARING BEFORE THE BOARD, AS WELL AS MR. RICO HALTER, THE CHIEF WITNESS FOR THE APPLICANTS IN THIS PROCEEDING. AT THE COMMENCEMENT OF THE MEETING, MR. MALTARP ASKED WHO WAS REPRESENTING THE UNION AT THAT TIME. MR. VANDEZANDE INDICATED THAT HE AND MR. ZUIDERVELD WERE THE REPRESENTATIVE. MR. MALTARP REPLIED THAT HE WOULD NOT BARGAIN WITH THE UNION UNLESS ONE OF THE PRESENT EMPLOYEES WAS A MEMBER OF THE BARGAINING COMMITTEE AND THAT HE DID NOT RECOGNIZE MR. ZUIDERVELD AS A MEMBER OF THE BARGAINING COMMITTEE. THE SITUATION WITH REGARD TO MR. ZUIDERVELD WAS THAT HE HAD NOT WORKED AT THE PLANT SINCE SEPTEMBER 11, 1964. ACCORDING TO THE LETTER FROM THE UNION'S SOLICITOR TO THE COMPANY DATED SEPTEMBER 15, THE UNION BELIEVED THAT MR. ZUIDERVELD HAD BEEN DISMISSED AND SOUGHT TO HAVE HIM REINSTATED. THE REPLY OF THE

COMPANY, DATED SEPTEMBER 16, WAS THAT MR. ZUIDERVELD HAD BEEN "LAID OFF TEMPORARILY DUE TO LACK OF WORK" AND THAT HE WOULD BE "RECALLED AS SOON AS THE SITUATION IMPROVES". AT THE MEETING ON SEPTEMBER 22, WHEN MR. MALTARP INDICATED THAT HE DID NOT CONSIDER MR. ZUIDERVELD A MEMBER OF THE BARGAINING COMMITTEE, MR. VANDEZANDE ASKED HIM WHETHER MR. ZUIDERVELD WAS AN EMPLOYEE AND MR. MALTARP'S ONLY REPLY WAS THAT HE WAS NOT WORKING THERE AT THE TIME AND HE DID NOT RECOGNIZE HIM AS A UNION REPRESENTATIVE.

THE CIRCUMSTANCES LEADING UP TO THE ATTENDANCE AT THE MEETING OF THE EMPLOYEES WHO OPPOSED THE UNION WERE AS FOLLOWS: IMMEDIATELY FOLLOWING RECEIPT BY THE UNION OF THE BOARD'S CERTIFICATE, MR. VANDEZANDE COMMUNICATED WITH MR. JOHN DUIKER, THE PRESIDENT OF THE UNION'S BARRIE LOCAL, AND ASKED HIM TO ARRANGE FOR A MEETING OF THE EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY FOR SEPTEMBER 2 TO DISCUSS WHAT PROPOSALS SHOULD BE PUT FORWARD BY THE UNION IN ITS NEGOTIATIONS WITH THE COMPANY. MR. VANDEZANDE'S INSTRUCTIONS TO MR. DUIKER WERE THAT THE INVITATION TO ATTEND THE MEETING WAS TO BE EXTENDED TO ALL THE EMPLOYEES OF THE COMPANY; THE MEETING WAS NOT TO BE CONFINED TO MEMBERS ALONE. MR. ZUIDERVELD THEN OBTAINED PERMISSION FROM MR. MALTARP TO POST, AND HE DID POST, IN THE PLANT A NOTICE ANNOUNCING THE MEETING. SOME OF THE EMPLOYEES SPOKE TO MR. MALTARP ABOUT THIS NOTICE AND, ACCORDING TO THE WITNESSES FOR THE APPLICANT, MR. MALTARP TOLD THEM IT WAS NOT A PROPER MEETING SINCE IT WAS TO BE HELD IN A PRIVATE RESIDENCE. THE EMPLOYEES OPPOSED TO THE UNION DID NOT ATTEND THE UNION MEETING AT WHICH THE PROPOSALS WERE DRAFTED AND IT IS EVIDENT FROM THE TESTIMONY OF MR. HALTER THAT PART OF THEIR MOTIVATION FOR REFRAINING FROM ATTENDING THE MEETING CAME FROM MR. MALTARP'S VIEWS AS TO THE PROPRIETY OF THE MEETING. SUBSEQUENTLY, THEY TOLD MR. MALTARP THAT THEY DID NOT WANT TO BE REPRESENTED BY THE UNION AND MR. MALTARP COMMUNICATED THEIR POSITION TO THE UNION IN THE LETTER OF SEPTEMBER 16. MR. KELSEY'S COMMENT CONCERNING THIS INFORMATION, IN HIS LETTER TO THE COMPANY OF SEPTEMBER 17 WAS AS FOLLOWS: "WE SHOULD POINT OUT THAT THE SO-CALLED 'STATEMENT' BY EMPLOYEES THAT THEY DO NOT WISH TO BE REPRESENTED BY THE ASSOCIATION IS OF NO EFFECT IN VIEW OF THE CERTIFICATION ISSUED BY THE BOARD, AND DOES NOT AFFECT THE RELATIONS BETWEEN YOURSELF AND THE ASSOCIATION." THE OBJECTING EMPLOYEES HAD ALSO INFORMED MR. MALTARP THAT THEY WANTED TO ATTEND ANY NEGOTIATIONS AT WHICH THE UNION WAS PRESENT AND MR. MALTARP HAD INFORMED THEM OF THE MEETING OF SEPTEMBER 22. A NUMBER OF THEM, INCLUDING MESSRS. ZWART AND HALTER, ATTENDED. AT THIS MEETING, THE OBJECTING EMPLOYEES SUPPORTED MR. MALTARP'S REFUSAL TO NEGOTIATE ON THE GROUND THAT THE REPRESENTATIVES OF THE UNION WERE IN HIS OPINION NOT PROPERLY ELECTED. MR. VANDEZANDE TOLD THEM THAT IT WAS NOT THEIR BUSINESS, WHEREUPON THE EMPLOYEES LEFT, ALONG WITH MR. MALTARP.

FOLLOWING THE MEETING OF SEPTEMBER 22, MR. VANDEZANDE COMMUNICATED WITH MR. KELSEY WHO, ON SEPTEMBER 24 WROTE TO MR. MALTARP IN PART AS FOLLOWS:

I THINK IT SHOULD BE MADE PERFECTLY CLEAR TO YOU AGAIN THAT THE INTERNAL MANAGEMENT OF THE UNION IS OF NO CONCERN OF YOURS AND THAT YOUR CONSISTENT PARTICIPATION IN THE RELATIONS BETWEEN THE UNION, ITS MEMBERS AND THE EMPLOYEES, AND THE OBVIOUSLY COERCIVE MEASURES WHICH YOU HAVE TAKEN

AND PRESSURE YOU HAVE PLACED ON THE EMPLOYEES, IS COMPLETELY CONTRARY TO THE LABOUR RELATIONS ACT.

THE COMPOSITION OF THE BARGAINING COMMITTEE IS OF NO CONCERN TO YOU. IT IS COMPOSED OF A REPRESENTATIVE OF THE TRADE UNION AND AN EMPLOYEE OF YOURS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 13(5) OF THE ACT. THE BARGAINING COMMITTEE IS PROPERLY CONSTITUTED AND YOUR REFUSAL TO BARGAIN WITH IT AND YOUR CONSTANT EFFORTS TO PROVOKE THE REMAINING EMPLOYEES INTO SOME ACT CAN LEAD ONLY TO THE CONCLUSION THAT YOU HAVE NO DESIRE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO CONCLUDE A COLLECTIVE AGREEMENT IN ACCORDANCE WITH YOUR OBLIGATIONS UNDER THE ACT.

MR. KELSEY CONCLUDED HIS LETTER BY SUGGESTING A FURTHER MEETING ON MONDAY, OCTOBER 5, 1964, AT 11.00 A.M.

THE MEETING SCHEDULED FOR OCTOBER 5 WAS CALLED OFF BECAUSE, A FEW DAYS BEFORE THE DATE SET FOR THE MEETING, MR. ZUIDERVELD, WHO HAD IN THE MEANTIME OBTAINED OTHER EMPLOYMENT, WAS REFUSED TIME OFF BY HIS NEW EMPLOYER. MR. VANDEZANDE TELEPHONED MR. MALTARP TO ARRANGE A POSTPONEMENT OF THE MEETING AND A NEW DATE WAS AGREED UPON - OCTOBER 14. IN THE COURSE OF THE CONVERSATION, MR. VANDEZANDE ASKED MR. MALTARP IF HE WOULD RECOGNIZE MR. ZUIDERVELD AND HIMSELF AS REPRESENTATIVES OF THE UNION. MR. MALTARP STATED THAT HE WOULD NOT RECOGNIZE EITHER OF THEM - THAT OTHER REPRESENTATIVES WOULD HAVE TO BE DESIGNATED. ON MR. VANDEZANDE'S INSTRUCTIONS, MR. KELSEY WROTE TO THE COMPANY ON OCTOBER 1, STATING THAT MR. VANDEZANDE AND AN EMPLOYEE WOULD BE IN ATTENDANCE AT THE MEETING OF OCTOBER 14. HOWEVER, BEFORE THE MEETING TOOK PLACE, THE SUPERINTENDENT AT MR. ZUIDERVELD'S NEW PLACE OF EMPLOYMENT CALLED HIM INTO THE OFFICE AND TOLD HIM THAT HE DID NOT WANT HIM TO GO TO THE MEETING OR BE BOTHERED BY PHONE CALLS. MR. MALTARP ALSO SPOKE TO MR. ZUIDERVELD - IT IS NOT CLEAR WHETHER MR. MALTARP WAS PRESENT IN THE SUPERINTENDENT'S OFFICE OR WHETHER THE CONFERENCE TOOK PLACE ON THE TELEPHONE IN THE SUPERINTENDENT'S OFFICE - AND TOLD HIM THAT HE HAD HAD TROUBLE WITH THE EMPLOYEES, THAT HE DID NOT WANT ANY FURTHER TROUBLE AND THAT HE DID NOT WANT MR. ZUIDERVELD TO ATTEND THE MEETING. MR. ZUIDERVELD THEREUPON CALLED MR. VANDEZANDE AND TOLD HIM HE WOULD BE UNABLE TO PARTICIPATE IN THE BARGAINING AND THE MEETING SCHEDULED FOR OCTOBER 14 WAS CALLED OFF.

THE INSTANT APPLICATION BY THE EMPLOYEES FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION WAS MADE ON NOVEMBER 3, 1964. SINCE NOTICE TO BARGAIN WAS GIVEN BY THE UNION ON SEPTEMBER 2, 10 AND 15, THIS APPLICATION DOES NOT FALL WITHIN SUBSECTION 1 OF SECTION 45. AGAIN, THE UNION, BY ARRANGING THE MEETING OF SEPTEMBER 22, COMMENCED TO BARGAIN AND, EVEN IF FOR PRESENT PURPOSES WE WERE TO ASSUME THAT THE UNION HAD NOT SOUGHT TO BARGAIN THEREAFTER, IT IS OBVIOUS THAT THE SIXTY-DAY PERIOD SPECIFIED IN SUBSECTION 2 OF SECTION 45 HAD NOT ELAPSED BETWEEN SEPTEMBER 22 AND THE DATE WHEN THE INSTANT APPLICATION WAS MADE. THIS APPLICATION IS THEREFORE UNTIMELY AND MUST BE DISMISSED.

WE WOULD BE LOATH TO LEAVE THE IMPRESSION, HOWEVER, THAT THE UNION



DID NOT SEEK TO BARGAIN SUBSEQUENT TO THE MEETING OF SEPTEMBER 22. ALTHOUGH NO MEETING TOOK PLACE AFTER THAT DATE, NEVERTHELESS ATTEMPTS WERE MADE BY THE UNION TO ARRANGE ANOTHER MEETING. THE HOLDING OF THE MEETING WAS FRUSTRATED BY THE ACTION OF MR. MALTARP. HAD THIS PROCEEDING BEEN INSTITUTED BY THE EMPLOYER, IT SEEMS TO US THAT THE ONLY POSITION WE COULD HAVE TAKEN WOULD HAVE BEEN THAT IT DOES NOT LIE IN THE MOUTH OF AN EMPLOYER IN THESE CIRCUMSTANCES TO COMPLAIN THAT THE UNION HAD FAILED TO CONTINUE TO BARGAIN.

IT IS CONCEIVABLE THAT THERE MAY BE SITUATIONS IN WHICH, ALTHOUGH AN EMPLOYER MAY NOT BE HEARD TO ASSERT THAT THERE HAS BEEN A FAILURE ON THE PART OF THE UNION TO BARGAIN, NEVERTHELESS THE EMPLOYEES THEMSELVES MAY BE ENTITLED TO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS UNDER SECTION 45(2) OF THE ACT. HOWEVER, THIS IS NOT SUCH A CASE. THE EMPLOYEES WHO MADE THE INSTANT APPLICATION BEAR A LARGE MEASURE OF RESPONSIBILITY FOR THE ACTION OF THE EMPLOYER. ON THE FACTS SET OUT ABOVE, IT IS OBVIOUS FROM THE TESTIMONY OF MESSRS. ZWART AND HALTER THAT THE APPLICANTS HAVE NOT COME BEFORE THE BOARD WITH CLEAN HANDS. IN ADDITION, AT THE HEARING OF THIS APPLICATION THERE WAS EVIDENCE ADDUCED TO THE EFFECT THAT THE APPLICATION FORM ITSELF AND A DOCUMENT BEARING THE SIGNATURES OF EMPLOYEES SUPPORTING THE APPLICATION, AS WELL AS A NUMBER OF LETTERS SENT TO THE BOARD BY THE APPLICANTS IN CONNECTION WITH THE APPLICATION, WERE DRAWN UP WITH THE ACTIVE PARTICIPATION OF MRS. WOODS WHO, AS WE HAVE SEEN, ATTENDED THE MEETING OF SEPTEMBER 22 AS A REPRESENTATIVE OF MANAGEMENT. IF THE BOARD WERE TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT UNION IN SUCH CIRCUMSTANCES, IT WOULD BE PERMITTING THE EMPLOYER TO DO INDIRECTLY WHAT HE IS NOT PERMITTED TO DO DIRECTLY AND WOULD BE A PERVERSION OF THE SPIRIT AND INTENT OF THE ACT.

IN CONCLUSION, WE FEEL IMPELLED TO POINT OUT, IN VIEW OF THE ATTITUDE DISPLAYED BY MR. MALTARP, THAT THE EMPLOYER IS NOT ENTITLED TO DETERMINE WHO IS TO REPRESENT THE UNION IN BARGAINING, ANY MORE THAN THE UNION IS ENTITLED TO DETERMINE WHO SHALL REPRESENT THE EMPLOYER. IN ADDITION, THE PROVISIONS WHICH FORMERLY APPEARED IN THE ACT AS TO THE PRESENCE DURING BARGAINING OF A COMMITTEE INCLUDING EMPLOYEES OF THE EMPLOYER WAS REVOKED BY SECTION 2 OF THE LABOUR RELATIONS AMENDMENT ACT, 1964, WHICH CAME INTO FORCE ON OCTOBER 1, 1964."

INDEXED ENDORSEMENT - PROSECUTION

9204-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) v. ALGER PRESS LIMITED AND STEWART ALGER (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED OFFENCE OF CALLING OR AUTHORIZING AN UNLAWFUL LOCK-OUT CONTRARY TO SECTION 56 OF THE LABOUR RELATIONS ACT.

AT THE HEARING OF THIS MATTER HELD ON SEPTEMBER 15TH, 1964 EVIDENCE WAS PRESENTED AND ARGUMENT HEARD WITH RESPECT TO THE APPLICATION ONLY AS IT AFFECTS ALGER PRESS LIMITED. THE APPLICATION AS IT AFFECTS STEWART ALGER WAS ADJOURNED SINE DIE ON AGREEMENT OF THE PARTIES.



IN SUPPORT OF ITS ALLEGATION THE APPLICANT FILED A COPY OF AN ENDORSEMENT ISSUED BY ANOTHER DIVISION OF THE BOARD DATED SEPTEMBER 1ST, 1964 (FILE No. 9203-64-U) WHICH WAS IDENTIFIED AS BEING BETWEEN THE SAME PARTIES AND CONCERNING THE SAME CONDUCT OF THE RESPONDENT ALLEGED IN THE INSTANT APPLICATION. THE BOARD MADE THE FOLLOWING DECLARATION IN ITS SEPTEMBER 1ST ENDORSEMENT:

THE BOARD ... DECLARES THAT THE RESPONDENT ON OR ABOUT THE 10TH DAY OF AUGUST, 1964, ENGAGED IN A LOCKOUT IN THAT IT REFUSED TO CONTINUE TO EMPLOY A NUMBER OF ITS EMPLOYEES WITH A VIEW TO AVOIDING THE NEGOTIATION OF A COLLECTIVE AGREEMENT WITH THE APPLICANT THEREBY PREVENTING THE APPLICANT AND ITS EMPLOYEES FROM EXERCISING THE RIGHT OF COLLECTIVE BARGAINING WITH RESPECT TO THE WORK WHICH WAS BEING PERFORMED BY THE RESPONDENT IN ITS COMPOSING ROOM, AND THAT THE LOCKOUT ENGAGED IN BY THE RESPONDENT WAS UNLAWFUL.

THE APPLICANT SUBMITS THAT THE DECLARATION QUOTED IN PARAGRAPH 3 IS, OF ITSELF, SUFFICIENT EVIDENCE OF THE CONDUCT ALLEGED IN THIS APPLICATION FOR THE BOARD TO CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT. THE APPLICANT ARGUES THAT IN MAKING THE LOCK-OUT DECLARATION IN ITS ENDORSEMENT OF SEPTEMBER 1ST THE BOARD MADE A FINDING ON THE MERITS OF THE APPLICANT'S ALLEGATION, NAMELY, THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL LOCK-OUT. THE APPLICANT ASSERTS THAT THE ABOVE FINDING, WITHOUT MORE, CONSTITUTES SUFFICIENT EVIDENCE TO ESTABLISH A PRIMA FACIE CASE IN THE INSTANT APPLICATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL LOCK-OUT.

THE BOARD HAS ALWAYS LOOKED UPON AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AND AN APPLICATION FOR A STRIKE OR LOCK-OUT DECLARATION AS BEING TWO DIFFERENT TYPES OF PROCEEDINGS. AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION HAS BEEN REGARDED BY THE BOARD AS BEING IN THE NATURE OF A QUASI-CRIMINAL PROCEEDING SINCE PENAL CONSEQUENCES CAN RESULT TO THE PARTY AGAINST WHOM THE BOARD HAS GRANT LEAVE. AN APPLICATION FOR A STRIKE OR LOCK-OUT DECLARATION, ON THE OTHER HAND, HAS BEEN REGARDED BY THE BOARD AS A CIVIL PROCEEDING SINCE ITS PURPOSE IS ONLY TO INFORM THE PARTIES AND THE PUBLIC AS TO THE LAWFULNESS OR UNLAWFULNESS OF THE ALLEGED MISCONDUCT OF THE NAMED RESPONDENT. SINCE A PROSECUTION APPLICATION IS CONSIDERED TO BE A QU CRIMINAL PROCEEDING THE RESPONDENT CANNOT BE COMPELLED TO TESTIFY AGAINST ITSELF, WHEREAS IN A DECLARATION APPLICATION, WHICH IS A CIVIL PROCEEDING, THE RESPONDENT IS A COMPELLABLE WITNESS.

IN VIEW OF THE ENTIRELY DIFFERENT REMEDIES CONTEMPLATED BY AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AND AN APPLICATION FOR A STRIKE OR LOCK-OUT DECLARATION, AND MORE IMPORTANTLY, THE DIFFERENT EVIDENTIARY PROCEDURES WHICH APPLY IN THE TWO TYPES OF APPLICATION, THE BOARD IS OF THE OPINION THAT IT SHOULD NOT ACCEPT THE FINDINGS OF FACT MADE BY THE BOARD IN ITS DECLARATION OF SEPTEMBER 1ST AS EVIDENCE OF THOSE FACTS IN THE INSTANT APPLICATION.

THERE BEING NO OTHER EVIDENCE BEFORE THE BOARD THE APPLICATION, AS IT AFFECTS ALGER PRESS LIMITED, IS DISMISSED."

INDEXED ENDORSEMENT - SECTION 65

9731-64-U: HERMAN LUKS (COMPLAINANT) v. LOCAL UNION 353 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND MR. HARDY AND MR. FARQUHAR (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT HAS FILED A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH HE HAS NAMED AS RESPONDENTS LOCAL UNION 353 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND TWO PERSONS WHOM HE DESCRIBES AS "MR. HARDY AND MR. FARQUHAR, BOTH BUSINESS AGENTS FOR THE ABOVE MENTIONED LOCAL UNION AND ALSO PERSONALY RESPONDENTS IN THIS MATTER". THE GIST OF HIS COMPLAINT IS THAT THE TWO UNION OFFICIALS REFUSED TO ISSUE TO HIM A "WORKING CARD" AND THEREBY DEPRIVED HIM OF THE OPPORTUNITY TO OBTAIN EMPLOYMENT WITH THE CANADIAN COMSTOCK COMPANY. HE ALLEGES THAT THE UNION AND ITS OFFICIALS ACTED CONTRARY TO THE "CANADIAN BILL OF RIGHTS, THE CHARTER OF UNITED NATIONS AND THE ONTARIO LABOUR RELATIONS ACT".

MR. D.B. KAY, FIELD OFFICER, WAS AUTHORIZED BY THE BOARD TO INQUIRE INTO THE COMPLAINT. MR. KAY INTERVIEWED THE COMPLAINANT AND SUBMITTED TO THE BOARD A WRITTEN STATEMENT BY THE COMPLAINANT IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN SUCH CASES (SEE PRACTICE NOTE #1/61, C.C.H. CANADIAN LABOUR LAW REPORTS, VOL. 2, ¶160, 803). IT IS ON THE BASIS OF THIS STATEMENT, AND THIS STATEMENT ALONE, THAT THE BOARD HAS TO DETERMINE WHETHER FURTHER INQUIRY IS TO BE MADE, AND FOR THIS PURPOSE THE BOARD ACCEPTS THIS STATEMENT AT FACE VALUE. SEE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA CASE, O.L.R.B. MONTHLY REPORT, APRIL 1964, p.64.

AS THE BOARD HAS POINTED OUT IN A NUMBER OF CASES, AND MOST RECENTLY IN THE TORONTO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1964, p. 236,

"...SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT" (SEE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, p. 62, HEIST INDUSTRIAL SERVICES CASE, (1962) C.C.H. CANADIAN LABOUR LAW REPORTS, ¶16, 263, C.L.S. 76-912). IN OTHER WORDS, AN AGGRIEVED PERSON DOES NOT BECOME ENTITLED TO THE REMEDIES REFERRED TO IN SUBSECTION 4 OF SECTION 65, SUCH AS REINSTATEMENT OR COMPENSATION, SIMPLY BY SHOWING THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST. TO BE ENTITLED TO SUCH RELIEF, HE MUST ESTABLISH THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST FOR A REASON FORBIDDEN BY SOME SPECIFIC PROVISION OF THE ACT OTHER THAN SECTION 65. FOR EXAMPLE, HE MUST SHOW THAT HE HAS BEEN DISCHARGED OR DISCRIMINATED AGAINST BECAUSE HE IS A MEMBER OF A TRADE UNION, OR

BECAUSE HE WAS EXERCISING ONE OF THE RIGHTS ASSURED TO HIM UNDER THE TERMS OF THE LABOUR RELATIONS ACT.

IT IS OBVIOUS THAT THE BOARD HAS NO JURISDICTION TO DEAL WITH ANY COMPLAINT ALLEGING A VIOLATION OF THE CANADIAN BILL OF RIGHTS OR THE CHARTER OF THE UNITED NATIONS. THE BOARD HAS JURISDICTION TO DEAL ONLY WITH MATTERS ARISING UNDER THE LABOUR RELATIONS ACT. IS THERE ANYTHING IN THE STATEMENT MADE BY THE AGGRIEVED PERSON TO THE FIELD OFFICER TO SUPPORT A CLAIM THAT HE HAS BEEN DISCRIMINATED AGAINST IN A MANNER FORBIDDEN BY THE LABOUR RELATIONS ACT?

IN A STATEMENT TO THE FIELD OFFICER THE COMPLAINANT TAKES THE POSITION THAT THE RESPONDENTS HAVE INFRINGED SECTIONS 10, 35 AND 36 OF THE ACT. IN SO FAR AS SECTION 10 IS CONCERNED, AS THE BOARD POINTED OUT IN THE INTERNATIONAL HARVESTER COMPANY CASE, O.L.R.B. MONTHLY REPORT, MARCH, 1963, P. 547, THAT SECTION HAS NO RELEVANCE TO A CLAIM UNDER SECTION 65. THERE IS NO ALLEGATION, AND THERE IS NOTHING IN THE COMPLAINANT'S STATEMENT TO INDICATE, THAT THE RESPONDENT UNION WAS ONE IN THE FORMATION OR ADMINISTRATION OF WHICH AN EMPLOYER OR EMPLOYERS' ORGANIZATION HAD PARTICIPATED OR THAT ANY EMPLOYER HAD CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT. THE COMPLAINANT DOES ALLEGE THAT THE UNION HAD DISCRIMINATED AGAINST HIM BECAUSE OF HIS "NATIONALITY, ANCESTRY, RACE AND PLACE OF ORIGIN". EVEN ASSUMING THAT THERE WAS EVIDENCE OF DISCRIMINATION AGAINST HIM BY THE UNION FOR THESE REASONS, THE BOARD WOULD BE PREVENTED UNDER SECTION 10 OF THE ACT FROM CERTIFYING THE UNION, BUT THE SECTION DOES NOT PROVIDE THE FOUNDATION FOR A REMEDY UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. HIS REMEDY IN THIS RESPECT LIES UNDER OTHER LEGISLATION AND BEFORE ANOTHER TRIBUNAL.

THE ALLEGATION THAT THERE HAS BEEN AN INFRINGEMENT OF SECTION 36 MUST BE REGARDED IN THE SAME LIGHT. IT SHOULD BE NOTED THAT THE SECTION DOES NOT CREATE AN OFFENCE. IT DECLARES THAT AN AGREEMENT THAT DISCRIMINATES IN THE MANNER THEREIN SET OUT SHALL BE DEEMED NOT TO BE A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. IT DOES NOT PROVIDE A BASIS FOR A REMEDY UNDER SECTION 65 OF THE ACT. IT SHOULD BE NOTED THAT THERE IS NOTHING IN THE MATERIAL BEFORE US TO INDICATE THAT ANY COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT UNION AND THE CANADIAN COMSTOCK COMPANY DISCRIMINATES IN THE MANNER DESCRIBED IN THE SECTION.

WE COME THEN TO DEAL WITH THE ALLEGATIONS THAT THERE HAS BEEN AN INFRINGEMENT OF SECTION 35 OF THE ACT. SUBSECTION 2 OF THAT SECTION STATES THAT NO EMPLOYER SHALL DISCHARGE AN EMPLOYEE IN THE CIRCUMSTANCES THERE INDICATED. IT IS CLEAR FROM THE STATEMENT OF THE COMPLAINANT THAT HE WAS NEVER AT ANY TIME HIRED BY THE CANADIAN COMSTOCK COMPANY AND IT FOLLOWS THEREFORE THAT HE WAS NEVER DISCHARGED BY THAT COMPANY. IN ADDITION, SINCE THE COMPLAINANT'S CLAIM IS AGAINST THE UNION AND TWO OFFICERS OF THE UNION, AND NOT AGAINST THE EMPLOYER, HE CANNOT RELY ON SECTION 35 FOR RELIEF.

WE HAVE CAREFULLY EXAMINED THE ACT AND WE HAVE BEEN UNABLE TO FIND ANY PROVISION OF THE ACT UNDER WHICH THE COMPLAINANT WOULD BE ENTITLED TO RELIEF UNDER SECTION 65 ON THE BASIS OF THE EVIDENCE CONTAINED IN THE STATEMENT HE HAS MADE TO THE FIELD OFFICER.



IN VIEW OF THE CIRCUMSTANCES SET OUT ABOVE AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. THE COMPLAINT IS THEREFORE DISMISSED."

SPECIAL ENDORSEMENT IN CONCILIATION APPLICATION

8876-64-C: THE BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL No. 12, ONTARIO (APPLICANT) v. KEM'S MASONRY (RESPONDENT).

ON NOVEMBER 17TH, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE QUESTION AT ISSUE IN THIS CASE IS WHETHER THE RESPONDENT, KEM'S MASONRY, (HEREINAFTER CALLED "KEM'S") HAS BECOME THE SUCCESSOR TO ABLE CONSTRUCTION (HEREINAFTER CALLED "ABLE") BY REASON OF A SALE OF A PART OF ABLE'S BUSINESS TO KEM'S WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. SECTION 47A(1) PROVIDES:

IN THIS SECTION,

- (A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;
- (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVING CORRESPONDING MEANINGS.

ABLE IS A PARTNERSHIP CONSISTING OF THREE PERSONS WHO ENGAGE IN THE BRICKLAYING AND MASONRY BUSINESS. THE THREE PERSONS ARE ALL SONS-IN-LAW OF ONE, CHRISTIAN BETTENDORF. WHILE THE EVIDENCE DOES NOT SUPPORT AN INFERENCE THAT BETTENDORF IS A PARTNER IN THE BUSINESS, IT IS CLEAR THAT HE IS BY NO MEANS DISINTERESTED IN IT. HE HAS BACKED THE PARTNERS' NOTES AT THE BANK; HE MADE HIS BASEMENT AVAILABLE AS AN OFFICE, RENT FREE; THE AFFAIRS OF THE BUSINESS WERE DISCUSSED WITH HIM, A FORMER BRICKLAYER. FROM TIME TO TIME IN GIVING EVIDENCE ABOUT THE BUSINESS HE USED THE PHRASE "WE DID THIS" - "WE DID THAT".

ABLE HAS A COLLECTIVE BARGAINING RELATIONSHIP WITH THE APPLICANT TRADE UNION. FOR SOME TIME PRIOR TO SEPTEMBER, 1963, ABLE HAD EMPLOYED NON-UNION MEN WHEN OPERATING IN THE KITCHENER - WATERLOO AREA. ON SEPTEMBER 26, 1963, THIS BOARD HELD THAT THE APPLICANT AND ABLE WERE BOUND BY A COLLECTIVE AGREEMENT. NOTWITHSTANDING THIS DECISION, THE APPLICANT UNION PERMITTED ABLE TO COMPLETE ITS OUTSTANDING JOBS WITHOUT EMPLOYING UNION MEN AND PAYING UNION RATES IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT. SOME NEGOTIATIONS TOWARDS A NEW AGREEMENT TOOK PLACE, BUT THESE APPARENTLY BROKE DOWN. ACCORDINGLY, ON FEBRUARY 29, 1964, THE UNION, BY LETTER, ADVISED ABLE THAT ALL PAST CONSIDERATIONS WERE WITHDRAWN AND THAT ALL VIOLATIONS OF THE EXISTING AGREEMENT WOULD BE DEALT WITH IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT BETWEEN THE PARTIES.

ABLE'S BUSINESS IN THE KITCHENER-WATERLOO AREA HAS DECLINED IN 1964. SINCE MARCH 9TH IT HAS BUILT NO APARTMENTS. IN JULY IT HAD JOBS ON A FEW HOUSES AND A FACTORY ADDITION. THE REASON FOR ITS BUSINESS DECLINE, ACCORDING TO KUEHN, ONE OF THE PARTNERS, AND TO



BETTENDORF, WAS IT COULD NOT COMPETE WITH NON-UNION CONTRACTORS - THAT IS, IT COULD NOT MATCH THEIR BIDS. ON MARCH 9TH IT HAD A HOSPITAL JOB IN FERGUS, BUT THIS WAS A UNION JOB.

KEM'S WAS CONSTITUTED ON MARCH 9TH, 1964. BETTENDORF IS THE ONLY MEMBER OF THE FIRM. ACCORDING TO BETTENDORF AND KUEHN, BETTENDORF HAD CONSIDERED JOINING ABLE AS A PARTNER, BUT IT WAS FELT THIS WOULD NOT WORK OUT SINCE THERE HAD BEEN SOME DISAGREEMENT BETWEEN THE THREE SONS-IN-LAW AND BETTENDORF REGARDING THE RUNNING OF THE BUSINESS. ACCORDINGLY, BETTENDORF SET UP HIS OWN FIRM AND COMMENCED OPERATIONS. KEM'S ADDRESS IS THE SAME AS ABLE'S, AND WHILE KEM'S HAS NO TELEPHONE NUMBER, THAT IS, IT DOES NOT PAY FOR A PHONE, ABLE'S NUMBER APPEARS ON KEM'S STATIONERY. FOR A TIME, ABLE AND KEM'S SHARED A PART-TIME GIRL IN ABLE'S OFFICE WITH ABLE PAYING HER SALARY. THE TWO FIRMS HAVE ALSO USED THE SAME PART-TIME ESTIMATOR.

UP UNTIL MAY, 1964, KEM'S BUSINESS WAS VERY SMALL. BUT THEREAFTER IT BLOSSOMED IN COMPARISON TO ABLE'S. THIS IS EXPLAINED BY BETTENDORF AS FOLLOWS: "... THERE WERE NO UNION JOBS TO BE HAD. ABLE TRIED TO TENDER BUT COULD NOT GET A BID ACCEPTED. WE (KEM'S) GOT THE JOBS BECAUSE WE ARE NON-UNION." AS SOON AS KEM'S OPERATIONS EXPANDED, EQUIPMENT WAS REQUIRED, AND ON MAY 7TH KEM'S AND ABLE ENTERED INTO AN AGREEMENT WHEREBY ABLE AGREED TO RENT TO KEM'S CERTAIN OF ITS EQUIPMENT, INCLUDING A FORK LIFT TRUCK, A UTILITY VEHICLE, SCAFFOLDING EQUIPMENT, AND TWO MORTAR MIXERS. CERTAIN OTHER EQUIPMENT SUCH AS MORTAR BOXES, SHOVELS, HOES, ETC., WAS SUPPLIED FREE OF CHARGE IF RETURNED. KEM'S AGREED TO RETURN EQUIPMENT ON FORTY-EIGHT HOURS' NOTICE. THE RATES, INCLUDING DISCOUNTS, ARE SET OUT IN A "MEMORANDUM" DATED MAY 7TH, 1964 (EXHIBIT 2). ABOUT 60% OF ABLE'S EQUIPMENT WAS RENTED TO KEM'S AT THE TIME OF THE HEARING AND UP TO 65% HAD BEEN RENTED FOR A SHORT TIME. WHILE THERE IS A SUGGESTION BY THE APPLICANT'S BUSINESS REPRESENTATIVE THAT KUEHN HAD TOLD HIM THAT BETTENDORF HAD MONEY IN ABLE AND THE EQUIPMENT WAS BEING RENTED ON THE BASIS OF THE DEBT BEING REDUCED, THIS IS DENIED BOTH BY KUEHN (CALLED BY THE APPLICANT) AND BETTENDORF. FURTHER, BETTENDORF STATED IN EVIDENCE THAT THE FIRST CHECKUE TO ABLE FOR RENT IN THE AMOUNT OF \$435 HAD BEEN HANDED TO ABLE FOUR OR FIVE DAYS AGO. ON THE BASIS OF ALL THE EVIDENCE, WE ARE UNABLE TO FIND BETTENDORF HAD ANY FINANCIAL INTEREST IN ABLE, OTHER THAN AS A BACKER OF LOANS ABLE FROM THE BANK.

SOME TIME PRIOR TO THIS RENTAL AGREEMENT, KEM'S ALSO TOOK OVER ONE OF ABLE'S JOBS WHICH HAD BEEN BID ON A NON-UNION BASIS. BETTENDORF STATED IN EVIDENCE THAT THE REASON WAS THAT ABLE FOUND IT COULD NOT CARRY ON AS A UNION SHOP ON THE JOB WITHOUT SUFFERING A LOSS. SO HE (KEM'S) TOOK OVER THE JOB ON A SUB-CONTRACT BASIS WITH THE APPROVAL OF THE GENERAL CONTRACTOR. KEM'S ALSO TOOK OVER FIVE OF ABLE'S EMPLOYEES ON THAT JOB AND RETAINED THEM IN ITS EMPLOY WHEN THE JOB WAS COMPLETED. THE MEN WHO WERE TAKEN OVER WERE NOT MEMBERS OF THE APPLICANT, THOUGH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN ABLE AND THE APPLICANT, THEY SHOULD HAVE BEEN. THE UNION TOOK ISSUE WITH ABLE ON THIS POINT IN A LETTER DATED APRIL 13TH, 1964, AND ABLE REPLIED BY LETTER DATED APRIL 16TH THAT KEM'S WAS DOING THE JOB. IT SEEMS LIKELY THAT THE UNION'S LETTER OF APRIL 13TH RESULTED IN THE SUB-CONTRACT TO KEM'S. IT SHOULD BE NOTED THAT KEM'S EMPLOYS A TOTAL OF SOME 18 OR 19 MEN.

FROM TIME TO TIME, BETTENDORF GETS HIS SONS-IN-LAW TO HELP HIM. FOR EXAMPLE, IF HE REQUIRES A MAN TO BE TRANSFERRED, ONE OF HIS SONS-IN-LAW WILL PICK THE MAN UP IN AN ABLE VEHICLE. WHEN ASKED IF HE HAD PAID ANY OF THE PARTNERS IN ABLE FOR THE TIME SPENT ON KEM'S BUSINESS, BETTENDORF REPLIED, "NOT YET." ASKED, "WILL YOU?" HIS ANSWER WAS SOMEWHAT EVASIVE: "THAT DEPENDS, I HELPED THEM A LOT FOR FIVE YEARS."

ALL THE WITNESSES, KUEHN, DAVIDSON, (THE APPLICANT'S BUSINESS REPRESENTATIVE) AND BETTENDORF AGREED THAT IN THE SMALL BRICKLAYING BUSINESS SUCH AS IS INVOLVED IN THE PRESENT CASE, THERE IS NO GOODWILL TO SELL. THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES. NONE HAD EVER HEARD OF THE SALE OF SUCH A BUSINESS IN THE SENSE OF A SALE AS A GOING CONCERN.

THE APPLICANT CONTENDS THAT HAVING REGARD TO THIS FACT, THERE TOOK PLACE A "LEASE" OR "OTHER DISPOSITION" OF PART OF ABLE'S BUSINESS TO KEM'S WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. IT WAS POINTED OUT THAT IF SUCH A TRANSACTION DOES NOT FALL WITHIN THE SECTION, IT WOULD BE AN EASY MATTER TO AVOID THE APPLICATION OF THE SECTION BY SIMPLY SETTING UP PERSONS INTERESTED IN ONE FIRM AS ANOTHER FIRM AND BOTH BIDDING ON A JOB, ONE AS UNION, THE OTHER AS NON-UNION. IF THE NON-UNION FIRM GETS THE JOB, THE UNION FIRM SUPPLIES THE EQUIPMENT, THE "KNOW-HOW" AND PERHAPS THE MEN. RELIANCE IS PLACED ON THE VERY BROAD DEFINITION OF "SALE" IN SECTION 47A(1), PARTICULARLY THE WORDS "AND ANY OTHER MANNER OF DISPOSITION".

THE RESPONDENT ARGUES THERE HAS BEEN NO "LEASE" OF THE BUSINESS OR PART OF ABLE'S BUSINESS TO KEM'S BECAUSE LEASE IMPLIES PARTING WITH EXCLUSIVE POSSESSION FOR A DEFINITE LENGTH OF TIME, AND SINCE THERE EXISTED A 48-HOUR RECALL PRIVILEGE, THERE WAS NO SURRENDER OF EXCLUSIVE POSSESSION. MOREOVER, RESPONDENT SUBMITS THAT PARTING WITH EQUIPMENT DOES NOT NECESSARILY MEAN PARTING WITH ONE'S BUSINESS, AND IT WAS EMPHASIZED THAT ABLE WAS STILL IN BUSINESS AND ATTEMPTING TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE APPLICANT UNION.

WE AGREE WITH THE APPLICANT THAT IF THE TRANSACTION IN QUESTION DOES NOT FALL WITHIN SECTION 47A, THIS WOULD MEAN THAT IT WOULD BE A COMPARATIVELY SIMPLE MATTER TO AVOID THE APPLICATION OF THE SECTION. THEREFORE, IF ON ONE INTERPRETATION OF THE LANGUAGE OF THE SECTION WE CAN FIND THAT A "SALE" HAS OCCURRED, EVEN THOUGH THE LANGUAGE MAY BE OPEN TO ANOTHER MEANING, WE BELIEVE WE SHOULD ADOPT THE MORE LIBERAL VIEW. WE ARE NOT IMPRESSED WITH THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT THERE HAS NOT BEEN A LEASE WITHIN THE MEANING OF THE SECTION. BUT EVEN IF THIS ARGUMENT IS ACCEPTED, COUNSEL HAD NO ANSWER TO THE ARGUMENT THAT THE TRANSACTION FALLS WITHIN THE BROADER LANGUAGE "OR ANY OTHER MANNER OF DISPOSITION". AND, IF IT IS CONTENDED THAT THESE WORDS MUST BE CONSTRUED EJUSDEM GENERIS WITH THE PRECEDING WORDS, THE TRANSACTION HERE IS SURELY SOMETHING CLOSELY AKIN TO A LEASE.

THUS, WE HAVE NO DIFFICULTY IN FINDING THAT THE TRANSACTION HERE IN QUESTION IS EITHER A "LEASE" OR "OTHER MANNER OF DISPOSITION" WITHIN THE MEANING OF THOSE WORDS IN SECTION 47A(1). THE IMPORTANT QUESTION IS WHETHER WHAT WAS LEASED OR OTHERWISE DISPOSED OF WAS A PART OF ABLE'S

"BUSINESS" AS THAT WORD IS USED IN THE SAID SECTION. IT SHOULD BE NOTED THAT THE DEFINITION OF "SELLS" IN 47A(1) INCLUDES "A PART OR PARTS" OF A BUSINESS, AND THUS THE FACT THAT ABLE IS STILL IN BUSINESS DOES NOT NECESSARILY AFFECT THE MATTER, ALTHOUGH WITH UP TO 65% OF ITS EQUIPMENT IN KEM'S HANDS, ABLE IS CERTAINLY NOT ABLE TO CONDUCT ITS BUSINESS ON A SCALE COMPARABLE TO ITS FORMER CAPACITY.

IN SEEKING TO DETERMINE WHETHER THE TRANSACTION HERE INVOLVED A LEASE OR OTHER DISPOSITION OF A PART OF ABLE'S BUSINESS, CERTAIN FACTS EMERGE WHICH ARE OF PECULIAR SIGNIFICANCE FROM AN INDUSTRIAL RELATIONSHIP POINT OF VIEW. FIRSTLY, WE HAVE THE RELATIONSHIP, FAMILY AND OTHERWISE, BETWEEN THE ACTIVE PARTICIPANTS OF KEM'S AND ABLE, A FACT WHICH EVEN COUNSEL FOR THE RESPONDENT CHARACTERIZED AS "A DAMAGING POINT AGAINST HIS CLIENT". SECONDLY, THERE IS THE QUESTION OF THE TIMING OF SOME OF THE EVENTS. THUS FOR EXAMPLE, THE UNION'S LETTER OF FEBRUARY 29TH IN WHICH IT ADVISED ABLE THAT ALL PAST CONSIDERATIONS WERE WITHDRAWN WAS FOLLOWED BY THE SETTING UP OF KEM'S ON MARCH 9TH. AGAIN, THE UNION'S LETTER OF APRIL 13TH COMPLAINING OF THE EMPLOYMENT OF NON-UNION MEN BY ABLE ON THE UNIVERSITY AVENUE JOB WAS FOLLOWED ALMOST IMMEDIATELY BY KEM'S TAKING OVER THAT JOB AS WELL AS THE EMPLOYEES OF ABLE ON THE JOB SITE. IT IS ADMITTED THAT THE REASON FOR THE TAKE-OVER WAS THAT ABLE COULD NOT HAVE COMPLETED THE JOB IF IT HAD TO PAY UNION RATES. THIRDLY, THERE IS THE DECLINE IN ABLE'S BUSINESS CONTRASTED WITH THE GROWTH OF KEM'S BUSINESS, THE LATTER OPERATING ON A NON-UNION BASIS. THIS IN TURN IS FOLLOWED BY THE "LEASE" OF UP TO 65% OF ABLE'S EQUIPMENT BY KEM'S, TOGETHER WITH A TAKE-OVER OF SOME OF ABLE'S EMPLOYEES. THE CLOSE CO-OPERATION AND ADVICE WHICH EXISTED BETWEEN BETTENDORF AND HIS SONS-IN-LAW PRIOR TO THE FORMATION OF KEM'S CONTINUES, BUT IN THE OPPOSITE DIRECTION. IT IS NOW THE SONS-IN-LAW WHO ARE ASSISTING BETTENDORF, PRESUMABLY BECAUSE ABLE, WHICH HAD HERETOFORE CARRIED ON A NON-UNION BUSINESS IN THE KITCHENER-WATERLOO AREA, IS NO LONGER ABLE TO OPERATE IN THAT AREA. FINALLY, REGARD MUST BE HAD TO THE NATURE OF THE BUSINESS BEING CARRIED ON BY ABLE. NONE OF THE WITNESSES HAD EVER HEARD OF THE SALE OF A SMALL MASONRY BUSINESS IN THE ORDINARY SENSE OF A SALE OF A BUSINESS AS A GOING CONCERN. ABLE AGREED THAT SUCH A BUSINESS DOES NOT HAVE GOODWILL AND THAT THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES.

IT SEEMS TO US THAT WHEN THESE FACTS TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE ARE CONSIDERED, WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS SOMETHING MORE THAN A MERE RENTING OF EQUIPMENT AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. IN OUR VIEW, THE TRANSACTION IN QUESTION IS A "LEASE" OR "OTHER MANNER OF DISPOSITION" BY ABLE TO KEM'S OF THE NON-UNION SIDE OF ABLE'S "BUSINESS" IN THE KITCHENER-WATERLOO AREA AND, SUBJECT TO WHAT FOLLOWS BELOW, FALLS WITHIN THE DEFINITION OF "SELLS" IN 47A(1) OF THE ACT. WE EMPHASIZE, HOWEVER, THAT OUR CONCLUSION IS NOT BASED ON ANY ONE CIRCUMSTANCE OR INCIDENT BUT ON ALL THE FACTS AND CIRCUMSTANCES OF THE CASE VIEWED AS A WHOLE.

THE SOLE QUESTION REMAINING IN OUR MINDS IS WHETHER WE ARE PRECLUDED FROM SO FINDING BY REASON OF COURT DECISIONS IN THE FOLLOWING CASES: GULF ISLANDS NAVIGATION LTD. V. SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA (CANADIAN DISTRICT) ET AL (1959) 18 D.L.R. 216; PARKHILL BEDDING & FURNITURE LTD. V. THE INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION LOCAL 714, (1961) 26 D.L.R. (2ND) 589; AND AMALGAMATED LITHOGRAPHERS



AMERICA, LOCAL 44 v. NATIONAL PAPER BOX LTD. (1964) 64 C.L.L.C. 914,002. WHILE A READING OF THESE CASES LEAVES ONE WITH THE DEFINITE IMPRESSION THAT THE COURTS THERE INVOLVED WERE INCLINED TO PLACE A RATHER RESTRICTIVE INTERPRETATION ON THE BRITISH COLUMBIA AND MANITOBA LEGISLATION, AFTER CAREFUL CONSIDERATION, WE ARE OF THE OPINION THAT THESE CASES ARE DISTINGUISHABLE FROM THE ONE BEFORE US.

IN THE FIRST PLACE, THE NATURE OF THE BUSINESSES DIFFERS CONSIDERABLY FROM THAT INVOLVED IN THE PRESENT CASE. WE HAVE FOUND THAT THE NATURE OF THE BUSINESS IS A FACTOR WHICH MUST BE CONSIDERED IN DETERMINING WHAT CONSTITUTES A "SALE" THEREOF.

IN THE SECOND PLACE, SECTION 47A IS WORDED DIFFERENTLY FROM THAT OF THE BRITISH COLUMBIA AND MANITOBA LEGISLATION. THE MANITOBA ACT REFERS ONLY TO THE PASSING OF THE OWNERSHIP (EMPHASIS ADDED) OF A BUSINESS AND, WHILE THE BRITISH COLUMBIA LEGISLATION PROVIDES FOR A TRANSACTION INVOLVING A SALE, LEASE, OR TRANSFER, IT DOES NOT INCLUDE THE VERY MUCH BROADER LANGUAGE "OR ANY OTHER MANNER OF DISPOSITION". ALTHOUGH IT IS TRUE THAT WHAT MUST BE DISPOSED OF IS A BUSINESS, NEVERTHELESS IT IS PROPER IN CONSTRUING THAT WORD TO HAVE REGARD TO THE VERY WIDE DEFINITION GIVEN TO "SELLS" IN THE ONTARIO ACT.

IT IS EQUALLY IMPORTANT TO NOTE THAT WHILE THE BRITISH COLUMBIA AND MANITOBA ACTS PROVIDE THAT WHERE A SALE OF A BUSINESS OR THE PASSING OF OWNERSHIP OF A BUSINESS TAKES PLACE, ANY COLLECTIVE AGREEMENT BINDING ON THE VENDOR AUTOMATICALLY BINDS THE PURCHASER, THIS IS NOT THE CASE UNDER THE ONTARIO ACT. SECTION 47A PROVIDES THAT WHERE A SALE TAKES PLACE, THE UNION MERELY RETAINS ITS BARGAINING RIGHTS AND IS LEFT WITH THE TASK OF BARGAINING FOR A NEW AGREEMENT WITH THE PURCHASER. IN OTHER WORDS, THE CONSEQUENCES OF A SALE UNDER THE BRITISH COLUMBIA AND MANITOBA ACTS DIFFER CONSIDERABLY FROM THOSE UNDER SECTION 47A, AND THE MANITOBA COURT OF APPEAL APPEARS TO HAVE BEEN INFLUENCED BY THIS FACT, FOR THE COURT CONCLUDES ITS JUDGMENT IN THE PARKHILL BEDDING CASE (SUPRA, AT PAGE 599) BY SAYING THAT IT WAS HARD TO THINK THAT WHEN THE PURCHASER PURCHASED THE ASSETS, IT ACQUIRED THEM "SUBJECT TO THE BURDEN OF A COLLECTIVE AGREEMENT" (EMPHASIS ADDED). IN OUR VIEW, IT IS PROPER TO CONSIDER THESE VERY DIFFERENT CONSEQUENCES IN CONSTRUING SECTION 47A.

IN SUM, THEN, AND HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT SECTION 47A(2) APPLIES TO THE TRANSACTION BETWEEN ABLE AND KEM'S AND THAT THEREFORE THE APPLICANT UNION WAS ENTITLED TO GIVE NOTICE TO BARGAIN TO KEM'S UNDER THAT SUBSECTION. NO BARGAINING HAS YET TAKEN PLACE. THE BOARD THEREFORE DIRECTS THAT THE PARTIES MEET, BARGAIN AND MAKE EVERY REASONABLE EFFORT TO ARRIVE AT A COLLECTIVE AGREEMENT AND REPORT THEIR PROGRESS TO THE BOARD ON OR BEFORE MONDAY, NOVEMBER 30TH, 1964."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE EVIDENCE IN THIS CASE DOES NOT SUPPORT THE FINDING OF THE MAJORITY THAT THE RENTAL OF EQUIPMENT AND WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS A LEASE OR OTHER MANNER OF DISPOSITION WITHIN THE MEANING OF SECTION 47A OF THE ONTARIO LABOUR RELATIONS ACT.



THE MAJORITY DECISION ON PAGE 5 MAKES THE FOLLOWING STATEMENTS:

"...NONE OF THE WITNESSES HAD EVER HEARD OF THE SALE OF A SMALL MASONRY BUSINESS IN THE ORDINARY SENSE OF A SALE OF A BUSINESS AS A GOING CONCERN. ALL AGREED THAT SUCH A BUSINESS DOES NOT HAVE GOODWILL AND THAT THE ESSENCE OF THE BUSINESS CONSISTS OF ITS EQUIPMENT AND SERVICES.

IT SEEMS TO US THAT WHEN THESE FACTS TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE ARE CONSIDERED, WHAT TRANSPIRED BETWEEN ABLE AND KEM'S WAS SOMETHING MORE THAN A MERE RENTING OF EQUIPMENT AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. IN OUR VIEW THE TRANSACTION IN QUESTION IS A 'LEASE' OR 'OTHER MANNER OF DISPOSITION' BY ABLE TO KEM'S OF THE NON-UNION SIDE OF ABLE'S 'BUSINESS' IN THE KITCHENER-WATERLOO AREA AND, SUBJECT TO WHAT FOLLOWS BELOW, FALLS WITHIN THE DEFINITION OF 'SELLS' IN 47A(1) OF THE ACT. ..."

WHILE IT MAY WELL BE THAT CERTAIN BUSINESSES ARE DIVISIBLE, IN THE INSTANT CASE, BECAUSE OF THE VERY NATURE OF THE BUSINESS, IT CAN ONLY EXIST AS A SINGLE INDIVISIBLE ENTITY. THE MASONRY CONTRACTING BUSINESS IS A SERVICE BUSINESS WHICH IS ENTIRELY DEPENDENT ON THE ABILITY OF THE OWNER OR OWNERS TO CONVINCE PROSPECTIVE CUSTOMERS THAT THEY HAVE THE KNOWLEDGE, SKILL AND ABILITY TO PERFORM THE REQUIRED WORK AT A COMPETITIVE PRICE. BY WHAT MEANS THEY FULFILL THE CONTRACT IS ENTIRELY WITHIN THEIR DISCRETION UNLESS THE CONTRACT PROVIDES OTHERWISE. THUS THEY MAY

- (A) SUBLET THE CONTRACT AND PROVIDE GENERAL SUPERVISION ONLY OR
- (B) RENT PART OR ALL OF THE EQUIPMENT NECESSARY TO PERFORM THE WORK OR
- (C) UTILIZE ONLY THEIR OWN WORK FORCE AND EQUIPMENT.

BY WHICHEVER OF THE ABOVE MEANS OR COMBINATIONS OF THEM THEY SATISFY THEIR CONTRACTUAL OBLIGATION, THEY ARE IN THE BUSINESS OF MASONRY CONTRACTING. THE RECEIVING OF THE CONTRACT IS THE BUSINESS, THE PERFORMANCE OF THE WORK, WHILE NECESSARY FOR THE FULFILMENT OF THE CONTRACT, IS INCIDENTAL TO IT. IT IS NOT THE BUSINESS PER SE.

IT IS COMMON KNOWLEDGE IN THE CONSTRUCTION INDUSTRY THAT SOME OF THE LARGEST CONTRACTORS IN CANADA DO NOT OWN THEIR OWN EQUIPMENT BUT RENT IT FROM COMPANIES WHO ARE IN THE CONSTRUCTION RENTAL EQUIPMENT BUSINESS. IT CAN HARDLY BE SAID THEY DO NOT OPERATE A BUSINESS BECAUSE THEY DO NOT OWN THEIR OWN EQUIPMENT. LIKEWISE, MANY SPECULATIVE BUILDERS HAVE NEITHER EMPLOYEES OR EQUIPMENT AND IT CANNOT BE SAID THAT THEY DO NOT OPERATE A BUSINESS IN THE CONSTRUCTION FIELD.

THE EVIDENCE IN THE INSTANT CASE IS THAT KEM'S MASONRY IS ENGAGED

IN THE MASONRY CONTRACTING BUSINESS AND THAT IT DOES NOT OWN EQUIPMENT. ABLE CONSTRUCTION IS LIKEWISE ENGAGED IN THE MASONRY CONTRACTING BUSINESS AND DOES OWN EQUIPMENT. THERE IS NO EVIDENCE THAT ABLE CONSTRUCTION WAS IN THE BUSINESS OF RENTING EQUIPMENT OR HAD RENTED ITS EQUIPMENT BEFORE, THIS BEING AN ISOLATED TRANSACTION. INDEED, THE FACT THAT THE EQUIPMENT COULD BE RECALLED ON 48 HOURS' NOTICE LENDS EMPHASIS TO THE TEMPORARY NATURE OF THIS ISOLATED TRANSACTION.

IN MY OPINION THE RENTAL OF EQUIPMENT AND THE SUBLETTING OF ONE CONTRACT, IN THE CIRCUMSTANCES OF THIS CASE, DOES NOT CONSTITUTE A SALE, LEASE, TRANSFER, OR OTHER MANNER OF DISPOSITION OF A BUSINESS WITHIN THE MEANING OF SECTION 47A.

CERTAINLY IT WAS NOT A SALE OF THE BUSINESS, FOR ABLE CONSTRUCTION CONTINUED IN BUSINESS THROUGHOUT, ACTIVELY SEEKING CONTRACTS, AND PROTECTING ITS ABILITY TO PERFORM SUCH BUSINESS, IF SECURED, BY PROVIDING FOR THE RETURN OF ITS EQUIPMENT ON 48 HOURS' NOTICE. NEITHER WAS IT A SALE OF A PART OF ITS BUSINESS, FOR IT WAS NOT IN THE BUSINESS OF RENTING EQUIPMENT. CLEARLY, IT DID NOT DISPOSE OF ITS BUSINESS OR A PART THEREOF, FOR TO "DISPOSE OF" MEANS TO GET RID OF OR "GIVE UP OWNERSHIP" AND WHEN USED IN CONJUNCTION WITH "SALE" NECESSARILY IMPLIES TO DIVEST ONESELF OF OWNERSHIP. THIS IT DID NOT DO.

THE MAJORITY DECISION STATES THAT WHAT WAS DISPOSED OF WAS "THE NON-UNION SIDE OF ABLE'S BUSINESS IN THE KITCHENER-WATERLOO AREA". SECTION 47A APPEARS TO HAVE BEEN ENACTED FOR THE PURPOSE OF PROTECTING THE BARGAINING RIGHTS OF A UNION WHEN A SALE TAKES PLACE. IF WHAT HAS BEEN DISPOSED OF IN THE INSTANT CASE IS "NON-UNION" IT IS DIFFICULT TO SEE WHAT APPLICATION SECTION 47A HAS.

INDEED, IN THESE CIRCUMSTANCES TO REQUIRE KEM'S TO BARGAIN WITH THE BRICKLAYERS UNION FOR A GROUP OF EMPLOYEES WHO HAVE NEVER BELONGED TO THE BRICKLAYERS UNION OR SHOWN ANY DESIRE TO DO SO, IS TO DENY TO THE EMPLOYEES THEIR MOST BASIC FUNDAMENTAL RIGHT UNDER THE LABOUR RELATIONS ACT TO JOIN A TRADE UNION OF THEIR OWN CHOICE.

FOR THE ABOVE REASONS I WOULD HAVE DISMISSED THIS APPLICATION."

ON DECEMBER 17, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT HAVING INFORMED THE BOARD THAT THE PARTIES HAVE ENTERED INTO A COLLECTIVE AGREEMENT, THESE PROCEEDINGS ARE HEREBY TERMINATED."

#### WRITTEN REASONS

8803-64-R: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PURE SPRING (CANADA) LTD. (RESPONDENT).

THE DECISION ON THIS MATTER WAS REPORTED IN O.L.R.B. MONTHLY REPORT, NOVEMBER 1964, UNDER THE HEADING "CERTIFIED SUBSEQUENT TO POST-HEARING VOTE". IT WAS INDICATED IN THAT DECISION THAT REASONS WOULD BE GIVEN IN WRITING. THE REASONS WERE ISSUED ON DECEMBER 11, 1964, AND ARE AS FOLLOWS:

"THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER ON JULY 20TH, 1964. THE REGISTRAR BY LETTER DATED JULY 30TH, 1964 CONFIRMED TO THE PARTIES THE DATE OF AUGUST 12TH, 1964 FOR THE CONDUCT OF THE VOTE. IN THE SAME LETTER THE REGISTRAR DIRECTED THAT "ALL INTERESTED PERSONS... REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT ON SATURDAY, THE 8TH DAY OF AUGUST, 1964, UNTIL THE VOTE IS TAKEN". THE REGISTRAR ALSO RULED THAT THE BALLOTS CAST BY NAMED PERSONS, WHOSE ELIGIBILITY TO VOTE HAD BEEN CHALLENGED, BE SEGREGATED. HE FURTHER RULED THAT THE BALLOT BOX BE SEALED AND THE BALLOTS NOT COUNTED PENDING A RULING BY THE BOARD AS TO THE ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT OF THE CHALLENGED VOTERS. THE REPRESENTATION VOTE WAS CONDUCTED ON AUGUST 12TH, 1964 IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICES AND THE SPECIAL RULINGS OF THE REGISTRAR.

THE REPORT OF THE RETURNING OFFICER DATED AUGUST 12TH, 1964 WAS FORWARDED TO THE PARTIES. ATTACHED TO HIS REPORT WAS FORM 49 OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS. PARAGRAPH 2 OF FORM 49 READS IN PART AS FOLLOWS:

TAKE NOTICE THAT UNLESS A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IS SENT TO THE BOARD BY ONE OF THE PARTIES... NOT LATER THAN THE 24TH DAY OF AUGUST, 1964, THE REPORT SHALL CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE AND THE MATTERS CONTAINED THEREIN, INCLUDING THE ELIGIBILITY OF ANY PERSON WHOSE ELIGIBILITY TO VOTE HAS BEEN CHALLENGED BY A PARTY OR IS IN DOUBT, AND THE BOARD MAY DISPOSE OF THE APPLICATION BEFORE IT WITHOUT FURTHER NOTICE TO ANY PARTY OR TO THE EMPLOYEES.

NO OBJECTION TO THE VOTE AND DESIRE TO MAKE REPRESENTATIONS WAS RECEIVED BY THE BOARD FROM ANY PARTY TO THIS PROCEEDING.

FOLLOWING THE EXPIRATION OF THE AUGUST 24TH TIME LIMITATION SET FORTH IN FORM 49 FOR THE FILING OF OBJECTIONS, THE BOARD, UPON THE WRITTEN AGREEMENT OF THE PARTIES, DIRECTED THAT THE BALLOT BOX BE OPENED AND THE UNSEGREGATED BALLOTS BE COUNTED. THE DIRECTION OF THE BOARD WAS CARRIED OUT ON SEPTEMBER 1ST, 1964. THE COUNT REVEALED THAT A MAJORITY OF THOSE PERSONS WHOSE NAMES APPEARED ON THE VOTERS' LIST VOTED IN FAVOUR OF THE APPLICANT. MOREOVER, EVEN IF ALL OF THE SEGREGATED BALLOTS, WHICH WERE NOT COUNTED, WERE CAST IN OPPOSITION TO THE APPLICANT, THE APPLICANT WOULD STILL HAVE A CLEAR MAJORITY OF THE ELIGIBLE VOTERS IN THE BARGAINING UNIT WHO FAVOURED THE APPLICANT.

THE RETURNING OFFICER FORWARDED A COPY OF HIS REPORT ON THE COUNT OF THE BALLOTS, DATED SEPTEMBER 1ST, 1964, TO THE PARTIES. ATTACHED TO HIS REPORT WAS A DOCUMENT ENTITLED "NOTICE OF REPORT OF RETURNING OFFICER ON COUNTING BALLOTS". THE NOTICE IS SIMILAR IN CONTENT TO FORM 49. PARAGRAPH 2 OF THE SEPTEMBER 1ST NOTICE, HOWEVER, READS IN PART AS FOLLOWS:



TAKE NOTICE THAT UNLESS A STATEMENT OF  
OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS  
IN CONNECTION WITH THE COUNT OF THE BALLOTS  
IN THE REPRESENTATION VOTE IS SENT TO THE  
BOARD BY ONE OF THE PARTIES...NOT LATER THAN  
THE 9TH DAY OF SEPTEMBER, 1964, THE REPORT  
SHALL CONSTITUTE THE EVIDENCE BEFORE THE  
BOARD IN RESPECT OF THE VOTE AND THE BOARD  
MAY DISPOSE OF THE APPLICATION BEFORE IT  
WITHOUT FURTHER NOTICE TO ANY PARTY OR TO THE  
EMPLOYEES.  
(THE UNDERLINING IS ADDED FOR EMPHASIS.)

BY LETTER DATED AND FILED WITH THE BOARD ON SEPTEMBER 9TH, 1964  
THE RESPONDENT ALLEGED THAT THE APPLICANT VIOLATED THE "NO PROPAGANDA"  
DIRECTIVE OF THE REGISTRAR. MORE PARTICULARLY THE RESPONDENT ALLEGED  
THAT A MEETING OF EMPLOYEES HAD TAKEN PLACE ON THE EVENING OF AUGUST  
11TH, 1964 AT WHICH A REPRESENTATIVE OF THE APPLICANT HAD SOLICITED  
THE SUPPORT OF THE EMPLOYEES PRESENT IN THE REPRESENTATION VOTE. THE  
RESPONDENT STATED IN ITS LETTER OF SEPTEMBER 9TH THAT IT WAS AWARE OF  
THE ALLEGED MEETING SHORTLY AFTER IT HAD TAKEN PLACE BUT WAS NOT AWARE  
OF THE EVENTS THAT TRANSPIRED AT THE MEETING UNTIL A COUPLE OF DAYS  
PRIOR TO THE FILING OF THE ALLEGATIONS.

THE APPLICANT BY LETTER DATED SEPTEMBER 16TH, 1964 SUBMITTED  
THAT IT WAS TOO LATE FOR THE RESPONDENT TO FILE ITS OBJECTIONS AND  
THAT THE BOARD SHOULD NOT ENTERTAIN THE ALLEGATIONS OF THE RESPONDENT.  
THE BOARD ACCORDINGLY LISTED THIS MATTER FOR HEARING ON OCTOBER 6TH,  
1964, TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO WHY THE BOARD  
SHOULD ENTERTAIN, AT THIS TIME, THE OBJECTIONS TO THE VOTE OF THE  
RESPONDENT.

AT THE HEARING ON OCTOBER 6TH, COUNSEL FOR THE APPLICANT ARGUED  
THAT IT WAS INCUMBENT UPON THE RESPONDENT TO FILE ITS CHARGES WITH  
RESPECT TO THE ALLEGED VIOLATION OF THE "NO PROPAGANDA" DIRECTIVE  
OF THE REGISTRAR BY AUGUST 24TH, 1964, THE LAST DAY FOR THE FILING  
OF OBJECTIONS ESTABLISHED IN FORM 49. COUNSEL ARGUED THAT THE WORDING  
OF FORM 49 CONTEMPLATES ANY AND ALL OBJECTIONS TO THE REPRESENTATION  
VOTE, WHETHER IT BE THE CONDUCT OF THE PARTIES PRIOR TO OR DURING  
THE TAKING OF THE VOTE. COUNSEL FURTHER ARGUED THAT THE ALLEGED  
VIOLATION OF THE "NO PROPAGANDA" DIRECTIVE DOES NOT FALL WITHIN THE  
PURVIEW OF THE SEPTEMBER 1ST NOTICE, AS THAT NOTICE SPECIFICALLY  
RESTRICTS OBJECTIONS TO THOSE MADE "IN CONNECTION WITH THE COUNT OF  
THE BALLOTS". COUNSEL URGED THE BOARD IN ARRIVING AT ITS DETERMINATION  
TO TAKE COGNIZANCE OF THE FACT THAT THE RESPONDENT ONLY FILED ITS  
OBJECTIONS AFTER THE RESULT OF THE VOTE WAS KNOWN AND THE APPLICANT  
HAD WON THE VOTE. HE NOTED THAT THE RESPONDENT'S ALLEGATIONS WERE MADE  
NEARLY A MONTH AFTER THE ALLEGED OFFENCE DESPITE THE FACT THAT THE  
RESPONDENT HAD KNOWLEDGE OF THE ALLEGED MEETING SHORTLY AFTER IT HAD  
TAKEN PLACE.

COUNSEL FOR THE RESPONDENT ASSERTED THAT THE TIME LIMITATIONS  
FOR THE FILING OF OBJECTIONS SET OUT IN THE NOTICES OF AUGUST 12TH  
AND SEPTEMBER 1ST HAVE NO APPLICATION TO THE CHARGES FILED BY THE  
RESPONDENT. IN SUPPORT OF HIS ASSERTION COUNSEL ARGUED THAT THE  
NOTICES ONLY CONTEMPLATED OBJECTIONS TO THE CONTENT OF THE RETURNING



OFFICER'S REPORT AND NOT THE EVENTS THAT OCCURRED PRIOR TO THE TAKING OF THE VOTE. COUNSEL STATED THAT THE ALLEGED OFFENCE RELATES TO A VIOLATION OF THE DIRECTIVE CONTAINED IN THE REGISTRAR'S LETTER OF JULY 30TH AND NOT TO THE REPORTS OF THE RETURNING OFFICER. COUNSEL FURTHER ARGUED THAT THE BOARD SHOULD ENTERTAIN ALLEGATIONS OF THIS NATURE IF THEY ARE MADE WITHIN A REASONABLE TIME AFTER THE COMMISSION OF THE ALLEGED OFFENCE. IT WAS ARGUED THAT IN THE INSTANT CASE AN UNREASONABLE TIME HAD NOT ELAPSED AND THAT, ACCORDINGLY, THE RESPONDENT WAS UNDER NO OBLIGATION TO ADDUCE EVIDENCE THAT IT EXERCISED DILIGENCE IN MAKING INQUIRIES CONCERNING THE CONDUCT OF THE APPLICANT. COUNSEL CLAIMED THAT THE BOARD MUST ACCEPT HIS STATEMENT THAT THE ALLEGED OFFENCE ONLY CAME TO THE ATTENTION OF THE RESPONDENT TWO DAYS BEFORE IT FILED ITS CHARGES. FOR THE BOARD TO REQUIRE THE RESPONDENT TO ADDUCE SUCH EVIDENCE PRIOR TO A HEARING ON THE CHARGES THEMSELVES WOULD CAUSE THE RESPONDENT TO REVEAL PART OF ITS CASE AND SO PREJUDICE ITS POSITION. IT WAS ALSO ARGUED THAT A VIOLATION OF THE "NO PROPAGANDA" DIRECTIVE OF THE REGISTRAR CONSTITUTES A FRAUD UPON THE BOARD AND THAT THE BOARD WILL INQUIRE INTO AN ALLEGATION OF FRAUD REGARDLESS OF WHEN IT IS MADE.

THE BOARD HAS CONSISTENTLY CONSTRUED THE WORDING OF FORM 49 TO INCLUDE ANY OBJECTIONS WITH RESPECT TO THE CONDUCT OF A REPRESENTATION VOTE INCLUDING THE CONDUCT OF THE PARTIES PRIOR TO THE TAKING OF THE VOTE. MOREOVER, WHEN IN THE PAST, VIOLATIONS OF THE BOARD'S "NO PROPAGANDA" DIRECTIVE HAS BEEN ALLEGED, THE PARTY MAKING THE ALLEGATION HAS FILED ITS OBJECTION WITHIN THE TIME PERIOD FIXED IN FORM 49. COUNSEL FOR THE RESPONDENT DID NOT SUGGEST THAT THE RESPONDENT WAS MISLED BY THE WORDING OF FORM 49 OR THAT THE BOARD'S INTERPRETATION OF THE FORM HAS BEEN OTHER THAN THAT STATED ABOVE. IN OUR VIEW, COUNSEL FOR THE RESPONDENT KNEW OR SHOULD HAVE KNOWN THAT FORM 49 CONTEMPLATED THE ALLEGED VIOLATION OF THE "NO PROPAGANDA" DIRECTIVE OF THE BOARD. WE ACCORDINGLY REJECT THE ARGUMENT OF THE RESPONDENT THAT THE TIME LIMITATIONS FOR THE FILING OF OBJECTIONS CONTAINED IN THE TWO NOTICES HAVE NO APPLICATION TO THE PRESENT ALLEGATIONS. WE WOULD ADD THAT IN THE INSTANT CASE IT APPEARS FROM THE WORDING OF COUNSEL FOR THE RESPONDENT'S LETTER OF SEPTEMBER 9TH THAT HE WAS ENDEAVOURING TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE OF SEPTEMBER 1ST. ALTHOUGH THE RESPONDENT DID FILE ITS OBJECTIONS WITHIN THE SEPTEMBER 1ST NOTICE THIS NOTICE CONFINED OBJECTIONS TO THE COUNT OF THE BALLOTS. WE WOULD REFER ALSO TO THE ARGUMENT OF COUNSEL FOR THE RESPONDENT THAT A VIOLATION OF THE "NO PROPAGANDA" DIRECTIVE OF THE REGISTRAR CONSTITUTES A FRAUD UPON THE BOARD. IF THE BOARD WERE TO ACCEPT THIS ARGUMENT IT WOULD FOLLOW THAT ANY CONTRAVENTION OF THE UNFAIR PRACTICES SECTIONS OF THE LABOUR RELATIONS ACT WOULD BE A FRAUD UPON THE BOARD, A CONCLUSION WHICH OBVIOUSLY IS UNTENABLE. THE BOARD ACCORDINGLY IS OF THE OPINION THAT IT WAS INCUMBENT UPON THE RESPONDENT TO FILE ITS OBJECTION BY AUGUST 24TH, THE TIME LIMITATION ESTABLISHED IN FORM 49 DATED AUGUST 12TH.

EVEN THOUGH A PARTY HAS FAILED TO FILE ITS OBJECTIONS TO A REPRESENTATION VOTE BY THE DATE FIXED BY THE BOARD IN FORM 49, THE BOARD HAS ENTERTAINED SUCH OBJECTIONS WHEN THAT PARTY HAS BEEN ABLE TO SATISFY THE BOARD THAT, EVEN WITH THE EXERCISE OF REASONABLE DILIGENCE, ALLEGED IMPROPRIETIES IN THE CONDUCT OF ANOTHER PARTY TO

THE VOTE ONLY CAME TO THE OBJECTOR'S KNOWLEDGE AFTER THE EXPIRATION OF THE TIME FOR MAKING OBJECTIONS. IN THE INSTANT CASE, HOWEVER, NO EVIDENCE WAS ADDUCED TO SHOW THAT THE RESPONDENT EXERCISED DILIGENCE IN MAKING INQUIRIES AS TO THE CONDUCT OF THE APPLICANT OR TO EXPLAIN WHY NEARLY A MONTH ELAPSED BETWEEN THE DATE OF THE HAPPENING OF THE ALLEGED OFFENCE AND THE FILING OF THE CHARGES, DESPITE THE FACT THAT COUNSEL FOR THE RESPONDENT STATED THAT THE RESPONDENT KNEW OF THE ALLEGED MEETING SHORTLY AFTER IT OCCURRED AND ADMITTED THAT THE RESPONDENT WAS SUSPICIOUS AS TO THE PURPOSE OF THE MEETING. IN THE ABSENCE OF SUCH EVIDENCE THERE IS NO BASIS UPON WHICH THE BOARD, IN THE EXERCISE OF ITS DISCRETION, COULD, AT THIS TIME, ENTERTAIN THE CHARGES MADE BY THE RESPONDENT.

WE REJECT THE ARGUMENT OF COUNSEL FOR THE RESPONDENT THAT THE RESPONDENT WOULD BE PREJUDICED IF IT WERE REQUIRED TO ADDUCE EVIDENCE RELATING TO THE DELAY IN FILING ITS CHARGES. THE PURPOSE OF THE OCTOBER 6TH HEARING AS SET OUT IN THE NOTICE SENT TO THE PARTIES WAS "TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO WHY THE BOARD SHOULD ENTERTAIN, AT THIS TIME, THE OBJECTIONS TO THE VOTE CONTAINED IN A LETTER DATED SEPTEMBER 9TH, 1964 FILED WITH THE BOARD BY THE RESPONDENT." IN OUR VIEW, IN THE PRESENT CIRCUMSTANCES, IT WAS INCUMBENT UPON THE RESPONDENT TO ADDUCE EVIDENCE TO SATISFY THE BOARD THAT, EVEN WITH THE EXERCISE OF REASONABLE DILIGENCE, THE RESPONDENT COULD NOT HAVE DISCOVERED THE ALLEGED IMPROPRIETIES IN THE CONDUCT OF THE APPLICANT BY AUGUST 24TH. MOREOVER, WE FAIL TO APPRECIATE HOW THE RESPONDENT, BY ADDUCING SUCH EVIDENCE, WOULD BE PREJUDICED IN A SUBSEQUENT HEARING HELD FOR THE PURPOSE OF INQUIRING INTO THE ALLEGATIONS OF THE RESPONDENT.

HAVING REGARD TO THE LATE FILING AND ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT IT OUGHT NOT TO ENTERTAIN THE ALLEGATIONS OF THE RESPONDENT CONTAINED IN ITS LETTER OF SEPTEMBER 9TH, 1964.

FOR THE ABOVE REASONS, THE BOARD ISSUED A CERTIFICATE TO THE APPLICANT DATED THE 4TH DAY OF NOVEMBER, 1964."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

I HAVE READ THE MAJORITY DECISION AND, WITH RESPECT, I AM UNABLE TO AGREE WITH IT.

THIS IS AN APPLICATION FOR CERTIFICATION FILED WITH THE BOARD BY THE APPLICANT UNION ON JUNE 22, 1964. THE TERMINAL DATE WAS FIXED AS JUNE 29TH.

A HEARING BEFORE THE BOARD WAS HELD AT OTTAWA ON JULY 16TH. CHARGES OF UNFAIR PRACTICES HAD BEEN MADE BY THE APPLICANT AGAINST THE RESPONDENT AND COUNTER CHARGES HAD BEEN MADE BY THE RESPONDENT AGAINST THE APPLICANT. DURING THE NOON RECESS, THE PARTIES, ON THEIR OWN VOLITION, HELD INFORMAL DISCUSSIONS. WHEN THE BOARD RECONVENED, THE PARTIES REPORTED THAT THEY HAD AGREED TO A REPRESENTATION VOTE AND THAT ALL CHARGES AND COUNTER CHARGES WERE WITHDRAWN. ON THIS UNDERSTANDING, THE HEARING WAS ADJOURNED AND ON JULY 20TH THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED. AT THE REQUEST OF THE PARTIES, THE

BOARD RULED THAT ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 16TH DAY OF JULY, 1964 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 16TH DAY OF JULY, 1964 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

ON INSTRUCTIONS FROM THE BOARD, REPRESENTATIVES OF THE PARTIES SUBSEQUENTLY MET AND MADE ARRANGEMENTS FOR THE VOTE AND SO ADVISED THE REGISTRAR.

BY LETTER DATED JULY 30TH, THE REGISTRAR CONFIRMED THE ARRANGEMENTS FOR THE CONDUCTING OF THE VOTE ON AUGUST 12TH, FROM 7:30 A.M. TO 10:30 A.M. AND FROM 10:30 A.M. TO 1:00 P.M., THE POLLING BOOTH TO BE LOCATED IN THE SALESMEN'S MEETING ROOM ON THE RESPONDENT EMPLOYER'S PREMISES AT OTTAWA. HE ALSO DIRECTED THE RESPONDENT TO POST NOTICES OF TAKING OF VOTE IN SUCH CONSPICUOUS LOCATIONS THAT THEY WOULD BE SEEN AND REACHED BY ALL ELIGIBLE VOTERS AND DREW ATTENTION TO THE FACT THAT THESE NOTICES CONTAINED THE FOLLOWING STATEMENT:-

"I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF SATURDAY, THE 8TH DAY OF AUGUST, 1964, UNTIL THE VOTE IS TAKEN."

IN THE SAME LETTER, THE REGISTRAR NAMED 13 PERSONS WHOSE ELIGIBILITY TO VOTE HAD BEEN CHALLENGED AND 2 PERSONS WHOSE EMPLOYMENT HAD BEEN TERMINATED BY THE COMPANY AND FOR WHOM AN APPLICATION HAD BEEN FILED FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE REGISTRAR RULED THAT SHOULD THESE PERSONS APPEAR AT THE POLL AND REQUEST BALLOTS THEIR BALLOTS WERE TO BE SEGREGATED AND NOT COUNTED. HE ALSO RULED THAT AT THE CLOSE OF THE POLL THE BALLOT BOX WAS TO BE SEALED AND THE BALLOTS DEPOSITED THEREIN NOT COUNTED PENDING A RULING BY THE BOARD AS TO THE ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT OF THE CHALLENGED PERSONS.

PURSUANT TO RULE 42 (F) OF THE RULES MADE UNDER THE LABOUR RELATIONS ACT, THE REGISTRAR ON JULY 30TH APPOINTED MR. F.D. EDWARDS TO BE RETURNING OFFICER FOR THE BOARD TO ACT IN THAT CAPACITY AT THE VOTE TO BE TAKEN IN THE PREMISES OF PURE SPRING (CANADA) LTD., AT OTTAWA ON THE 12TH DAY OF AUGUST, 1964.

THE REPRESENTATION VOTE WAS HELD ON AUGUST 12TH IN ACCORDANCE WITH THE ABOVE ARRANGEMENTS. THE SCRUTINEERS FOR THE APPLICANT AND RESPONDENT SIGNED A STATEMENT WITNESSED BY THE RETURNING OFFICER CERTIFYING THAT THE BALLOTING WAS FAIRLY CONDUCTED AND THAT ALL ELIGIBLE VOTERS WERE GIVEN AN OPPORTUNITY TO CAST THEIR BALLOTS IN SECRET AND THAT THE BALLOT BOX WAS PROTECTED IN THE INTEREST OF A FAIR AND SECRET VOTE.

ON AUGUST 14TH, THE RETURNING OFFICER ISSUED HIS REPORT UPON THE REPRESENTATION VOTE ALONG WITH THE NOTICE OF REPORT OF RETURNING OFFICER IN FORM 49. A COPY OF THE SAID NOTICE AND REPORT WAS DELIVERED TO THE PARTIES. FORM 49, AS POSTED, READS AS FOLLOWS:-

NOTICE OF REPORT OF RETURNING OFFICER

1. ATTACHED HERETO IS A COPY OF MY REPORT UPON THE REPRESENTATION VOTE HEREIN HELD ON THE 12TH DAY OF AUGUST, 1964, UNDER THE DIRECTION OF THE BOARD DATED THE 20TH DAY OF JULY, 1964.

2. TAKE NOTICE THAT UNLESS A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IS SENT TO THE BOARD BY ONE OF THE PARTIES OR BY AN EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES SO THAT,

- (A) IT IS RECEIVED BY THE BOARD; OR
- (B) IF MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 8 YORK STREET, TORONTO 1, ONTARIO, IT IS MAILED,

NOT LATER THAN THE 24TH DAY OF AUGUST, 1964, THE REPORT SHALL CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE AND THE MATTERS CONTAINED THEREIN, INCLUDING THE ELIGIBILITY OF ANY PERSON WHOSE ELIGIBILITY TO VOTE HAS BEEN CHALLENGED BY A PARTY OR IS IN DOUBT, AND THE BOARD MAY DISPOSE OF THE APPLICATION BEFORE IT WITHOUT FURTHER NOTICE TO ANY PARTY OR TO THE EMPLOYEES.

THE STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS SHALL,

- (A) BE IN WRITING SIGNED BY THE PERSON MAKING THE STATEMENT OR HIS REPRESENTATIVE;
- (B) CONTAIN THE NAMES OF THE PARTIES TO THE APPLICATION OR COMPLAINT;
- (C) CONTAIN A RETURN MAILING ADDRESS;
- (D) CONTAIN A CONCISE SUMMARY OF THE OBJECTIONS AND REPRESENTATIONS; AND
- (E) CONTAIN AN UNDERTAKING THAT THE PERSON MAKING THE STATEMENT WILL ATTEND IN PERSON OR BY A REPRESENTATIVE ANY HEARING DIRECTED BY THE BOARD IN CONNECTION WITH THE STATEMENT.

DATED THIS 14TH DAY OF AUGUST, 1964.

(SIGNED) F.D. EDWARDS  
.....

RETURNING OFFICER

NO OBJECTIONS WERE FILED BY THE PARTIES ON OR BEFORE AUGUST 24TH. ON AUGUST 27TH, THE PARTIES ADVISED THE BOARD THAT THEY HAD AGREED ON THE DISPOSITION OF CERTAIN PERSONS WHOSE ELIGIBILITY TO VOTE HAD BEEN CHALLENGED AND ALSO AGREED THAT THE BALLOT BOX BE OPENED AND THE BALLOTS COUNTED.

THE BALLOT BOX WAS OPENED BY THE RETURNING OFFICER ON SEPTEMBER



1ST IN THE PRESENCE OF REPRESENTATIVES OF THE PARTIES AND THE BALLOTS COUNTED. ON THE SAME DAY, THE RETURNING OFFICER ISSUED A REPORT ON THE COUNTING OF THE BALLOTS WHICH WAS ATTACHED TO A DOCUMENT BEARING THE HEADING "NOTICE OF REPORT OF RETURNING OFFICER ON COUNTING OF BALLOTS." THE SAID NOTICE AND REPORT READ AS FOLLOWS:-

NOTICE OF REPORT OF RETURNING OFFICER ON  
COUNTING OF BALLOTS

1. ATTACHED HERETO IS A COPY OF MY REPORT UPON THE COUNT OF THE BALLOTS IN THE REPRESENTATION VOTE HEREIN HELD ON THE 12TH DAY OF AUGUST, 1964, UNDER THE DIRECTION OF THE BOARD DATED THE 20TH DAY OF JULY, 1964.
2. TAKE NOTICE THAT UNLESS A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IN CONNECTION WITH THE COUNT OF THE BALLOTS IN THE REPRESENTATION VOTE IS SENT TO THE BOARD BY ONE OF THE PARTIES OR BY AN EMPLOYEE SO THAT IT IS RECEIVED BY THE BOARD OR, IF IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 8 YORK STREET, TORONTO 1, ONTARIO, IT IS MAILED NOT LATER THAN THE 9TH DAY OF SEPTEMBER, 1964, THE REPORT SHALL CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE, AND THE BOARD MAY DISPOSE OF THE APPLICATION BEFORE IT WITHOUT FURTHER NOTICE TO ANY PARTY OR TO THE EMPLOYEES.
3. THE STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS SHALL,
  - (A) BE IN WRITING SIGNED BY THE PERSON MAKING THE STATEMENT OR HIS REPRESENTATIVE;
  - (B) CONTAIN THE NAMES OF THE PARTIES TO THE APPLICATION OR COMPLAINT;
  - (C) CONTAIN A RETURN MAILING ADDRESS;
  - (D) CONTAIN A CONCISE SUMMARY OF THE OBJECTIONS AND REPRESENTATIONS; AND
  - (E) CONTAIN AN UNDERTAKING THAT THE PERSON MAKING THE STATEMENT WILL ATTEND IN PERSON OR BY A REPRESENTATIVE ANY HEARING DIRECTED BY THE BOARD IN CONNECTION WITH THE STATEMENT.

DATED AT TORONTO THIS 1ST DAY OF SEPTEMBER, 1964.

(SIGNED) F.D. EDWARDS.....  
RETURNING OFFICER

THE SAID REPORT OF THE RETURNING OFFICER READS AS FOLLOWS:-

FILE NO. 8803-64-R

1.	NUMBER OF SPOILED BALLOTS	<u>2</u>
2.	NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	<u>78</u>
3.	NUMBER OF BALLOTS MARKED AGAINST APPLICANT	<u>56</u>
4.	BALLOTS SEGREGATED AND NOT COUNTED	<u>10</u> <u>136</u>

DATED THIS 1ST DAY OF SEPTEMBER, 1964.

(SIGNED) ..... F.D. EDWARDS  
RETURNING OFFICER

IT SHOULD BE PARTICULARLY NOTED THAT THE LAST DAY TO FILE WITH THE BOARD A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IN CONNECTION WITH THE COUNT OF THE BALLOTS IN THE REPRESENTATION VOTE IS THE 9TH DAY OF SEPTEMBER, 1964.

ON SEPTEMBER 9TH THE BOARD RECEIVED A LETTER DATED SEPTEMBER 9TH FROM THE SOLICITORS FOR THE RESPONDENT WHICH READS AS FOLLOWS:-

" ON BEHALF OF PURE SPRING (CANADA) LTD. WE WISH TO RECORD OUR OBJECTIONS TO THE CERTIFICATION OF THE APPLICANT UNION FOLLOWING A REPRESENTATION VOTE WHICH WAS HELD ON AUGUST 12TH, 1964, AT THE COMPANY'S PREMISES AT OTTAWA, ONTARIO. OUR OBJECTIONS ARE BASED ON THE FOLLOWING ALLEGATIONS.

CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE RULES OF PROCEDURE AND REGULATIONS THEREUNDER, ELECTIONEERING WAS CARRIED ON BY THE UNION ON TUESDAY EVENING, AUGUST 11TH, 1964 AT THE BANK HOTEL IN HULL, QUEBEC. AT APPROXIMATELY 7:00 P.M. ON THAT DATE, ABOUT 17 EMPLOYEES OF THE COMPANY, INCLUDING THE FOLLOWING PERSONS (ALL OF WHOM ARE EMPLOYEES OF THE COMPANY IN THE BARGAINING UNIT), ATTENDED A MEETING IN A PRIVATE ROOM AT THE HOTEL: F. ROULEAU, A. LASCELLE, K. HAWKINS, V. CHAMPAGNE, A. LAVIGNE, R. COUSINS, R. CAMPEAU, T. LEGEURIER, M. TROUDEL, C. LACHAPELLE AND R. LEBLANC. THE ORGANIZATIONAL CAMPAIGN OF LOCAL 365, AS WELL AS THE REPRESENTATION VOTE TO BE HELD THE NEXT DAY, WERE DISCUSSED AND THOSE IN ATTENDANCE WERE URGED TO SUPPORT THE UNION IN THE VOTE. THE MEETING LASTED ABOUT 2 HOURS. IN ADDITION TO THE ABOVE-MENTIONED EMPLOYEES, THE MEETING WAS ATTENDED BY A PERSON WHO IS BELIEVED TO BE A BUSINESS REPRESENTATIVE OF LOCAL 365. THIS PERSON TOOK AN ACTIVE PART IN THE MEETING AND IN DISCUSSIONS RELATING TO THE REPRESENTATION VOTE.

WE UNDERTAKE ON BEHALF OF PURE SPRING (CANADA) LTD.

TO ATTEND ANY HEARING CALLED BY THE ONTARIO LABOUR RELATIONS BOARD TO DEAL WITH THESE ALLEGATIONS AND WILL PRESENT EVIDENCE TO SUBSTANTIATE THEM."

IN NOTICE OF HEARING DATED SEPTEMBER 11TH, THE BOARD LISTED THE MATTER FOR HEARING ON MONDAY, OCTOBER 5TH, AT TORONTO, AT 9:15 A.M. ON SEPTEMBER 17TH, THE REGISTRAR ADVISED THE PARTIES BY LETTER THAT THE HEARING SCHEDULED FOR MONDAY, OCTOBER 5TH, AT TORONTO, HAD BEEN ADJOURNED ON THE CONSENT OF THE PARTIES AND WOULD BE HELD ON THURSDAY, OCTOBER 8TH, COMMENCING AT 9:15 A.M. IN ROOM M-15 ON THE MAIN FLOOR OF THE COURT HOUSE LOCATED AT 2 DALEY AVENUE IN THE CITY OF OTTAWA. THE CONSENT TO THE ADJOURNMENT BY THE APPLICANT AND RESPONDENT WAS SENT TO THE BOARD BY SEPARATE TELEGRAMS DATED SEPTEMBER 16TH.

IN A LETTER TO THE BOARD DATED SEPTEMBER 16TH, SOLICITORS FOR THE APPLICANT STATED THAT AS THE OBJECTIONS OF THE RESPONDENT TO THE VOTE WERE NOT FILED BY AUGUST 24TH, THE LAST DAY SET OUT IN FORM 49 TO FILE OBJECTIONS TO THE VOTE, THE BOARD SHOULD NOT ENTERTAIN THE OBJECTIONS. THE LETTER READS AS FOLLOWS:-

" RECEIPT IS ACKNOWLEDGED OF YOUR LETTER OF SEPTEMBER 11TH ENCLOSING THE CHARGES OF VIOLATION OF THE SILENT PERIOD CONTAINED IN A LETTER FROM THE RESPONDENT'S SOLICITORS DATED SEPTEMBER 9TH.

THE ALLEGATIONS SET OUT IN THAT LETTER, IN THE APPLICANT'S SUBMISSION, ARE ENTIRELY FALSE AND INACCURATE. MOREOVER, IT WILL BE THE APPLICANT'S SUBMISSION THAT THE RESPONDENT IS NOT NOW PERMITTED TO ATTACK THE VALIDITY OF THE REPRESENTATION VOTE. THE REPORT OF THE RETURNING OFFICER DATED AUGUST 14TH (IN THE BOARD'S USUAL FORM) PROVIDED THAT UNLESS A STATEMENT OF OBJECTIONS WAS SENT TO THE BOARD BY THE 24TH DAY OF AUGUST, THE SAID REPORT WOULD CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE. NO OBJECTION WAS FILED BY THE COMPANY PRIOR TO AUGUST 24TH.

SUBSEQUENTLY, ON OR ABOUT AUGUST 27TH, THE APPLICANT AGREED IN WRITING TO THE COUNTING OF THE BALLOTS. ON SEPTEMBER 1ST, THE RETURNING OFFICER ISSUED HIS REPORT SHOWING THE APPLICANT TO HAVE RECEIVED IN EXCESS OF 50% OF THE BALLOTS CAST. 8 DAYS LATER, THE RESPONDENT, FOR THE FIRST TIME, ALLEGED A VIOLATION OF THE 'NO PROPAGANDA' RULE. SUCH OBJECTION WAS CLEARLY PROMPTED BY THE RESULT OF THE BALLOTING RATHER THAN BY ANY IMPROPRIETY ON THE PART OF THE APPLICANT OR ITS MEMBERS.

FOR ALL OF THE ABOVE REASONS, IT IS THE APPLICANT'S CONTENTION THAT THE RESPONDENT, IS GUILTY OF DELIBERATELY ATTEMPTING TO ABUSE THE BOARD'S PROCESS AND TO DELAY THE CLEAR RIGHT OF ITS EMPLOYEES TO BE REPRESENTED BY THE APPLICANT UNION. WE WOULD, THEREFORE, RESPECTFULLY URGE THE BOARD TO DEAL WITH THE MATTER WITHOUT A HEARING AND TO HOLD THAT THE RESPONDENT, BY ITS CONDUCT, IS NOW

ESTOPPED FROM ATTACKING THE VALIDITY OF THE REPRESENTATION VOTE."

A FURTHER LETTER DATED SEPTEMBER 24TH FROM THE SOLICITORS FOR THE RESPONDENT READS IN PART AS FOLLOWS:-

" .....IN REPLY TO YOUR LETTER OF SEPTEMBER 17TH, 1964, ENCLOSEING A COPY OF MR. ARMSTRONG'S LETTER, IT IS SUBMITTED THAT THE OBJECTION TAKEN BY THE RESPONDENT, THAT THERE WAS ELECTIONEERING DURING THE FORBIDDEN PERIOD TO THE TAKING OF THE REPRESENTATION VOTE, IS PROPERLY BEFORE THE BOARD AND THE BOARD SHOULD HOLD A HEARING TO CONSIDER THE FACTS SET FORTH IN OUR LETTER OF SEPTEMBER 9TH, 1964.

THE RESPONDENT WAS AWARE OF THE FACT THAT A MEETING HAD TAKEN PLACE A SHORT TIME AFTER THE HOLDING OF THE SAID MEETING. HOWEVER, THE RESPONDENT WAS NOT AWARE OF THE EVENTS WHICH TOOK PLACE DURING THE MEETING UNTIL ONE OR TWO DAYS PRIOR TO OUR LETTER OF SEPTEMBER 9TH, 1964. IT IS CLEARLY IMPROPER FOR ANY INTERESTED PARTY TO ENGAGE IN ELECTIONEERING DURING THE PROHIBITED PERIOD. HOWEVER, ELECTIONEERING, ITSELF, IF SUCH OCCURS DOES NOT FALL WITHIN THE AMBIT OF THE VOTING OFFICER'S RESPONSIBILITIES AND IT IS SUBMITTED THAT THE TIME PERIOD REFERRED TO IN THE EXAMINER'S REPORT OF THE VOTE IS LIMITED TO THE MANNER IN WHICH THE VOTE WAS TAKEN, THE FACILITIES, THE NUMBER OF VOTERS ETC.

IF THE RESPONDENT'S OBJECTIONS ARE NOT HEARD BY THE BOARD, THE WISHES OF THE EMPLOYEES MIGHT WELL BE IGNORED. I NOTE THAT IN THIS CASE THE UNION'S MAJORITY WAS ONLY TWO VOTES OUT OF APPROXIMATELY 150."

AFTER CONSIDERING THE ABOVE CORRESPONDENCE, THE BOARD DIRECTED THAT A HEARING BE HELD IN TORONTO ON OCTOBER 6TH AT 9:15 A.M. TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO WHY THE BOARD SHOULD ENTERTAIN, AT THIS TIME, THE OBJECTIONS TO THE VOTE CONTAINED IN THE LETTER DATED SEPTEMBER 9TH (SUPRA) FILED WITH THE BOARD BY THE RESPONDENT.

ARGUMENT AS PRESENTED BY COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT IS SUMMARIZED IN PARAGRAPHS 8 AND 9 RESPECTIVELY OF THE MAJORITY DECISION. AT THE CONCLUSION OF THE HEARING, THE CHAIRMAN ANNOUNCED THAT A DECISION WOULD BE GIVEN THAT AFTERNOON. SUBSEQUENTLY, HOWEVER, THE BOARD ADVISED THE PARTIES THAT, IN VIEW OF THE IMPORTANCE OF THE ISSUES BEFORE IT, THE HEARING SCHEDULED AT OTTAWA ON OCTOBER 8TH WAS BEING ADJOURNED SINE DIE AND THAT THE DECISION IN RESPECT OF THE OBJECTIONS FILED BY THE RESPONDENT WOULD BE GIVEN AS QUICKLY AS POSSIBLE.

WHILE THE BOARD'S PRACTICE HAS BEEN TO CONSIDER THE OBJECTIONS TO THE RETURNING OFFICER'S REPORT AS REFERRED TO IN FORM 49 TO ENCOMPASS ALL TYPES OF OBJECTIONS INCLUDING WHAT MAY TAKE PLACE PRIOR TO THE



OPENING OF THE POLL, THIS IS THE FIRST TIME TO MY KNOWLEDGE WHERE THE CORRECTNESS OF SUCH A PRACTICE HAS BEEN CHALLENGED. IN CONSIDERING THIS ASPECT OF THE INSTANT CASE, LET US ASSUME, BUT MAKING NO FINDING THEREON, THAT THE BOARD'S PRACTICE IS A CORRECT ONE.

THE MONTHLY REPORTS OF THE BOARD FROM APRIL 1ST, 1957 TO MARCH 31ST, 1964 SHOW THAT DURING THAT PERIOD THE BOARD CONDUCTED 909 POST-HEARING VOTES IN APPLICATIONS FOR CERTIFICATION. NO DATA HAS BEEN KEPT BY THE BOARD AS TO THE NUMBER OF VOTES IN WHICH THE BALLOT BOX HAS BEEN SEALED AT THE CLOSE OF THE POLL. HOWEVER, BASED ON CONSIDERABLE RESEARCH I HAVE PERSONALLY MADE IN RESPECT OF POST-HEARING CERTIFICATION VOTES AND ON MY KNOWLEDGE AND EXPERIENCE GAINED AS A MEMBER OF THE BOARD FOR OVER 14 YEARS, I ESTIMATE THAT THE BALLOT BOX HAS BEEN SEALED AT THE CLOSE OF THE POLL IN NOT MORE THAN 3% OF THESE VOTES. EVEN IF THIS CONSERVATIVE ESTIMATE WAS INCREASED TO THE ABSURDLY HIGH FIGURE OF 10% IN AT LEAST 818 OF THE 909 VOTES REFERRED TO ABOVE, THE RESULT OF THE VOTE WAS INCLUDED IN THE REPORT OF THE RETURNING OFFICER. THE PARTIES KNEW THE RESULT OF THE VOTE AT THE TIME FORM 49 WAS POSTED. MOREOVER, IT IS ABUNDANTLY CLEAR THAT FORM 49 WAS INTENDED TO REFER TO THE COMPLETE AND FINAL REPORT OF THE RETURNING OFFICER, INCLUDING THE RESULT OF THE VOTE, AND THE PARTIES TO THE PROCEEDING AND THE EMPLOYEES WOULD HAVE SIX CLEAR DAYS THEREAFTER TO MAKE ANY OBJECTIONS THERETO. CONSEQUENTLY, I MUST CONCLUDE THAT THE REPORT OF THE RETURNING OFFICER DATED AUGUST 14TH WAS MERELY AN "INTERIM REPORT" AND THAT HIS REPORT UPON THE REPRESENTATION VOTE AS CONTEMPLATED UNDER THE WORDING OF FORM 49 MUST COMBINE THE "INTERIM REPORT" AND THE REPORT ON THE COUNTING OF THE BALLOTS DATED SEPTEMBER 1ST. AS THE LAST DAY FOR FILING OBJECTIONS TO THE REPORT ON THE COUNTING OF THE BALLOTS WAS SEPTEMBER 9TH, I MUST HOLD THAT THE OBJECTIONS FILED BY THE SOLICITOR FOR THE RESPONDENT ON THAT DATE ARE TIMELY, AND IT IS MANDATORY ON THE BOARD TO HEAR THEM. TO RULE OTHERWISE, WOULD BE DISCRIMINATING AGAINST THE PARTIES IN VOTES WHERE THE BOARD HAS DIRECTED THAT THE BALLOT BOX BE SEALED BECAUSE THEY MUST ELECT TO FILE OBJECTIONS TO AN INCOMPLETE REPORT OF THE RETURNING OFFICER AND BEFORE THEY KNOW THE RESULT OF THE VOTE. WHILE THE DECISION OF THE MAJORITY IN THE INSTANT CASE FAVOURS THE APPLICANT UNION, IN MY OPINION IT WILL NOT BE APPLAUDED BY UNIONS GENERALLY WHO INVARIABLY AWAIT THE RESULT OF A POST-HEARING VOTE BEFORE FILING OBJECTIONS. TO SAY THE LEAST, IT WOULD BE RATHER EMBARRASSING FOR A UNION TO HAVE FILED OBJECTIONS TO A VOTE WHICH THE SUBSEQUENT COUNT OF THE BALLOTS SHOWED THEY HAD WON.

AS THE MAJORITY DECISION HAS RULED THAT THE OBJECTIONS OF THE RESPONDENT WERE FILED LATE AND THE BOARD WILL NOT ENTERTAIN THEM, I AM OBLIGED TO DEAL WITH THE ISSUING OF A CERTIFICATE TO THE APPLICANT UNION.

HAVING HEWED TO THE PRECISE WORDING OF FORM 49 IN RESPECT OF THE TIMELINESS OF THE OBJECTIONS FILED BY THE RESPONDENT, THE BOARD MUST APPLY THE SAME STRICT INTERPRETATION OF THE WORDING IN DECIDING WHAT EVIDENCE IS ACTUALLY BEFORE IT IN RESPECT OF THE NUMBER OF PERSONS IN THE BARGAINING UNIT WHO VOTED FOR THE APPLICANT UNION.

THE REPORT OF THE RETURNING OFFICER ISSUED ON AUGUST 14TH CONTAINS

INTER ALIA THE NUMBER OF NAMES ON THE REVISED VOTERS' LIST; THE NUMBER OF BALLOTS, EXCLUDING SEGREGATED BALLOTS, CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST; THE NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON THE VOTERS' LIST; THE NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON THE VOTERS' LIST AND THE NAMES OF EIGHT PERSONS WHOSE ELIGIBILITY TO VOTE HAD BEEN CHALLENGED AND IS LEFT FOR THE BOARD'S DECISION. AS STATED IN PARAGRAPH 7 ABOVE, THE REGISTRAR IN HIS LETTER TO THE PARTIES DATED JULY 30TH RULED THAT AT THE CLOSE OF THE POLL THE BALLOT BOX WAS TO BE SEALED AND THE BALLOTS DEPOSITED THEREIN NOT COUNTED, PENDING A RULING BY THE BOARD AS TO THE ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT OF THE CHALLENGED PERSONS. THERE IS NO EVIDENCE, THEREFORE, IN THE SAID REPORT ON THE COUNT OF THE BALLOTS WHICH IS, OF COURSE, NECESSARY FOR THE BOARD TO DETERMINE IF OVER FIFTY PER CENT OF THE PERSONS IN THE BARGAINING UNIT VOTED FOR THE APPLICANT.

THE REPORT OF THE RETURNING OFFICER DATED SEPTEMBER 1ST, AS SET OUT IN PARAGRAPH 12 ABOVE, CONTAINS INTER ALIA THE NUMBER OF BALLOTS MARKED IN FAVOUR AND AGAINST THE APPLICANT UNION AND THE NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED. IT DOES NOT CONTAIN THE NUMBER OF NAMES ON THE REVISED VOTERS' LIST.

FORM 49, NOTICE OF REPORT OF RETURNING OFFICER, AS SET OUT IN PARAGRAPH 10 ABOVE AND TO WHICH THE REPORT OF THE RETURNING OFFICER DATED AUGUST 14TH WAS ATTACHED, DISTINCTLY STATES THAT "THE REPORT SHALL CONSTITUTE THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE AND THE MATTERS CONTAINED THEREIN..." BY USING FORM 49, THE BOARD HAS "SHUT OUT" THE SUBSEQUENT EVIDENCE PERTAINING TO THE COUNT OF THE BALLOTS AS CONTAINED IN THE REPORT OF THE RETURNING OFFICER DATED SEPTEMBER 1ST. HOW, THEN, CAN THE BOARD MAKE A FINDING THAT MORE THAN 50% OF THE EMPLOYEES IN THE BARGAINING UNIT CAST THEIR BALLOTS IN FAVOUR OF THE APPLICANT UNION? FORM 51, NOTICE OF THE REPORT OF RETURNING OFFICER WHERE PRE-HEARING REPRESENTATION VOTE HAS BEEN HELD, IS USED IN SUCH VOTES WHERE THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE HAS BEEN SEALED AT THE CLOSE OF THE POLL ON THE DIRECTION OF THE BOARD AND THE BALLOTS NOT COUNTED AT THAT TIME. IT SPECIFICALLY COVERS THIS SITUATION BY INCLUDING THE WORDS "EXCEPT AS TO THE RESULT OF THE VOTE". THIS MODIFICATION PERMITS THE EVIDENCE IN THE ORIGINAL REPORT OF THE RETURNING OFFICER AND THE REPORT OF THE RETURNING OFFICER ON THE COUNT OF THE BALLOTS TO BE JOINED AS EVIDENCE. FORM 49 (SUPRA) PROHIBITS SUCH ACTION.

IT SHOULD BE FURTHER NOTED THAT SECTION 44(4) OF THE RULES OF PROCEDURE AND REGULATIONS STATES "THE REPORT CONSTITUTES EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE". IN FORM 49, HOWEVER, THE WORDING IS "CONSTITUTES THE EVIDENCE BEFORE THE BOARD IN RESPECT OF THE VOTE" AND CAN ONLY BE INTERPRETED TO MEAN ALL THE EVIDENCE WITH NOTHING FURTHER ADDED.

FOR THESE REASONS, I MUST FIND THAT UNDER THE WORDING OF FORM 49 AS QUOTED ABOVE THERE IS NO EVIDENCE BEFORE THE BOARD THAT 50% OF THE EMPLOYEES IN THE BARGAINING UNIT VOTED FOR THE APPLICANT UNION AND THE APPLICATION FOR CERTIFICATION MUST BE DISMISSED. THIS IS AS

AN ABSURD RESULT AS IS THE DECISION OF THE MAJORITY IN SEPARATING THE TWO REPORTS OF THE RETURNING OFFICER AND RULING THAT THE OBJECTIONS FILED BY THE RESPONDENT ON SEPTEMBER 9TH WERE LATE AND SHOULD NOT BE ENTERTAINED. I WOULD HAVE JOINED THE REPORT OF THE RETURNING OFFICER ON THE VOTE AND DATED AUGUST 14TH WITH THE REPORT OF THE RETURNING OFFICER ON THE COUNT OF THE BALLOTS AND DATED SEPTEMBER 1ST AND CONSIDERED THEM JOINTLY AS THE REPORT OF THE RETURNING OFFICER AS CONTEMPLATED UNDER FORM 49. THIS COMBINED REPORT WOULD THEN CONTAIN EXACTLY THE SAME EVIDENCE AS THE REPORT OF THE RETURNING OFFICER WOULD HAVE CONTAINED IF THERE HAD BEEN NO DIRECTION FROM THE REGISTRAR TO SEAL THE BALLOT BOX. I WOULD HAVE ENTERTAINED THE OBJECTIONS OF THE RESPONDENT AND DIRECTED A HEARING BEFORE THE BOARD. IF THE RESPONDENT PROVED HIS ALLEGATIONS CONCERNING A VIOLATION OF THE "NO PROPAGANDA" RULE, I WOULD HAVE DIRECTED A NEW VOTE. IF THE ALLEGATIONS WERE NOT PROVEN, I WOULD HAVE CERTIFIED THE APPLICANT UNION ON THE EVIDENCE CONTAINED IN THE COMBINED REPORTS OF THE RETURNING OFFICER.

BEFORE LEAVING THIS MATTER, THERE ARE SOME OTHER ASPECTS OF THIS CASE UPON WHICH I WOULD LIKE TO COMMENT.

IN SUBSTANCE, THE OBJECTIONS OF THE RESPONDENT DO NOT DEAL WITH THE VOTE PER SE OR WITH THE CONDUCT OF THE VOTE OR ANY MATTER WITHIN THE JURISDICTION OF THE RETURNING OFFICER. THE RESPONDENT OBJECTS TO THE CERTIFICATION OF THE APPLICANT UNION BECAUSE OF THE ALLEGED MISCONDUCT OF INTERESTED PARTIES IN CARRYING ON PROPAGANDA AND ELECTIONEERING IN THE "SILENT PERIOD" PRIOR TO THE COMMENCEMENT OF THE VOTE AND CONTRARY TO THE SPECIFIC DIRECTION OF THE REGISTRAR AS SET OUT IN PARAGRAPH 6 ABOVE. IN MY VIEW, THE BOARD NOT ONLY LACKS AUTHORITY BUT IT IS A DENIAL OF NATURAL JUSTICE FOR THE BOARD TO FORECLOSE THE RESPONDENT'S RIGHT TO MAKE SUCH OBJECTIONS BY USING A LIMITATION PERIOD ESTABLISHED IN THE NOTICE OF REPORT OF RETURNING OFFICER UPON THE REPRESENTATION VOTE WHEN THE MATTER COMPLAINED OF DOES NOT FALL WITHIN THE JURISDICTION OF THE RETURNING OFFICER AND THEREFORE COULD NOT BE INCLUDED IN THE SAID REPORT.

FORM 49 IS BOTH DEFECTIVE AND INADEQUATE WHEN APPLIED TO A POST-HEARING VOTE WHERE THE BALLOT BOX HAS BEEN SEALED AT THE CLOSE OF THE POLL. NO ALLOWANCE HAS BEEN MADE IN THE WORDING TO COPE WITH SUCH A SITUATION. THERE IS NO PROVISION IN THE RULES OF PROCEDURE AND REGULATIONS FOR A SECOND REPORT OF THE RETURNING OFFICER PERTAINING TO THE COUNTING OF THE BALLOTS. MOREOVER, IF THE SEGREGATED BALLOTS IN THE INSTANT CASE, CAST BY PERSONS WHOSE ELIGIBILITY TO VOTE HAD BEEN CHALLENGED, HAD BECOME MATERIAL TO THE RESULT OF THE VOTE, THE BOARD WOULD HAVE HAD TO APPOINT AN EXAMINER TO INQUIRE INTO THE DUTIES, RESPONSIBILITIES AND EMPLOYMENT RECORDS OF THESE PERSONS AND ISSUE A REPORT THEREON. EVIDENCE, SO ADDUCED, COULD NOT BE CONSIDERED BY THE BOARD UNDER THE WORDING OF FORM 49. NO PARTY TO THE PROCEEDING SHOULD BE PREJUDICED BECAUSE OF A DEFECT OR THE INADEQUACY OF THE BOARD'S FORMS. WHAT FORM 49 WAS APPARENTLY DESIGNED TO DO WAS TO MAKE KNOWN TO THE PARTIES THE OFFICIAL DATA CONCERNING THE CONDUCT OF THE VOTE AND THE COUNTING OF THE BALLOTS AND, IF THEY FIND ANY ERRORS OR OMISSIONS THEREIN, TO REGISTER THEIR OBJECTIONS WITHIN THE SPECIFIED TIME LIMIT. OTHERWISE, THE DATA WILL BE PRESUMED CORRECT AND WILL CONSTITUTE EVIDENCE BEFORE THE BOARD IN RESPECT OF THESE MATTERS. IN THE CIRCUMSTANCES OF THE INSTANT CASE,



FORM 49 IS DICTATING THE DECISION RATHER THAN THE BOARD'S RULES OF PROCEDURE AND COMMON SENSE.

THE OBJECTIONS FILED BY THE RESPONDENT COULD HAVE BEEN MADE AS AN APPLICATION UNDER SECTION 79(1) OF THE LABOUR RELATIONS ACT AND FILED WITH THE BOARD AFTER IT HAD ISSUED ITS DECISION. SUCH AN APPLICATION WOULD REQUEST THE BOARD TO REVIEW ITS DECISION. IF THE APPLICANT UNION WAS GUILTY OF CARRYING ON PROPAGANDA AND ELECTIONEERING DURING THE "QUIET PERIOD" CONTRARY TO THE DIRECTION OF THE REGISTRAR IN HIS LETTER OF JULY 30TH, THE CERTIFICATE WAS OBTAINED BY A FRAUD ON THE BOARD BECAUSE THE BOARD AUTOMATICALLY ASSUMES THAT THERE HAS BEEN NO VIOLATION UNLESS THE CONTRARY IS PROVED. SECTION 44 OF THE ACT READS AS FOLLOWS:-

44. IF A TRADE UNION HAS OBTAINED A CERTIFICATE BY FRAUD, THE BOARD MAY AT ANY TIME DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AND, UPON THE MAKING OF SUCH A DECLARATION, THE TRADE UNION IS NOT ENTITLED TO CLAIM ANY RIGHTS OR PRIVILEGES FLOWING FROM CERTIFICATION AND, IF IT HAS MADE A COLLECTIVE AGREEMENT BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT, THE COLLECTIVE AGREEMENT IS VOID.

IN SUCH AN APPLICATION, FORM 49 WOULD NOT BE RELEVANT.

COUNSEL FOR THE RESPONDENT AT THE HEARING ON OCTOBER 6TH ASSURED THE BOARD THAT THE EMPLOYER ONLY OBTAINED EVIDENCE ON SEPTEMBER 7TH OF WHAT TOOK PLACE AT THE ALLEGED MEETING OF INTERESTED PARTIES HELD IN THE BANK HOTEL ON THE EVENING OF AUGUST 11TH. THE OBJECTIONS WERE FILED WITH THE BOARD ON SEPTEMBER 9TH. TECHNICALLY, THE RESPONDENT WOULD HAVE HAD TO WAIT UNTIL THE DECISION WAS ISSUED BEFORE HE COULD ASK TO HAVE IT REVIEWED UNDER THE PROVISIONS OF SECTION 79(1) OF THE ACT. HE FILED HIS OBJECTIONS PROMPTLY AND BEFORE THE DECISION WAS ISSUED SO THE BOARD COULD HOLD A HEARING ON THE EVIDENCE HE WISHED TO ADDUCE AND MAKE A DECISION THEREON BEFORE THE CERTIFICATE, IF ANY, WAS ISSUED. MEETINGS SUCH AS THE ONE HELD ON AUGUST 11TH ARE HELD IN SECRET. IT IS ONE THING TO KNOW THAT A MEETING WAS HELD. IT IS AN ENTIRELY DIFFERENT MATTER AND MUCH MORE DIFFICULT TO FERRET OUT WHAT ACTUALLY HAPPENED AT THE MEETING. WITH RESPECT, IN THESE CIRCUMSTANCES, I AM UNABLE TO AGREE WITH MY COLLEAGUES THAT THERE WAS ANY ONUS ON THE RESPONDENT TO ADDUCE EVIDENCE AT THE SHOW-CAUSE HEARING THAT THERE WAS NO LACK OF DILIGENCE ON HIS PART IN TRYING TO OBTAIN THE NECESSARY EVIDENCE TO WARRANT MAKING THE OBJECTIONS. MOREOVER, COUNSEL CLAIMED THAT TO DO SO WOULD REQUIRE HIM TO ADDUCE EVIDENCE THAT WAS PART OF HIS CASE AGAINST THE APPLICANT UNION. ON THE CONTRARY, IT SHOULD BE A MATTER OF REAL CONCERN TO THIS BOARD THAT A PARTY MAY BE OBTAINING A CERTIFICATE BY FRAUD, AND IT IS INCUMBENT UPON THE BOARD TO CONDUCT A FULL HEARING IN THE MATTER IN ORDER TO INSURE THAT THE BOARD'S DIRECTIONS AND ORDERS HAVE BEEN SCRUPULOUSLY FOLLOWED. TO DO OTHERWISE, IS TO ENCOURAGE PARTIES TO VIOLATE THE BOARD'S DIRECTIONS WITH IMPUNITY AND INVITE JUDICIAL CENSURE.

#### ADDENDUM

THE FOLLOWING APPLICATION WAS INADVERTENTLY OMITTED FROM THE NOVEMBER 1964 REPORT.



9655-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. EXCELSIOR LAUNDERERS AND CLEANERS (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE BEING NO APPROPRIATE BARGAINING UNIT CONSISTING OF MORE THAN ONE EMPLOYEE OF THE RESPONDENT AS REQUIRED BY SECTION 6 OF THE LABOUR RELATIONS ACT, THE APPLICATION IS ACCORDINGLY DISMISSED."

STATISTICAL TABLES FOR DECEMBER 1964

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	DECEMBER 1964	1ST 9 MONTHS OF FISCAL YEAR 1964-65	1963-64
I. CERTIFICATION	76	706	547
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	67	62
III. DECLARATION OF SUCCESSOR STATUS	-	3	22
IV. CONCILIATION SERVICES	- *	603	844
V. DECLARATION THAT STRIKE UNLAWFUL	2	35	27
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	5
VII. CONSENT TO PROSECUTE	6	64	115
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	130	111
X. MISCELLANEOUS	3	20	16
TOTAL	103	1633	1749

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	DECEMBER 1964	1ST 9 MONTHS OF FISCAL YEAR 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	117	879	791

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	DECEMBER 1964	1ST 9 MONTHS OF 1964-65	FISCAL YR. 1963-64
I. CERTIFICATION	117	706	593
II. DECLARATION TERMINATING BARGAINING RIGHTS	9	71	79
III. DECLARATION OF SUCCESSOR STATUS	-	6	26
IV. CONCILIATION SERVICES	1	689	862
V. DECLARATION THAT STRIKE UNLAWFUL	2	35	27
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	2
VII. CONSENT TO PROSECUTE	3	60	115
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	139	117
IX. MISCELLANEOUS	6	21	10
TOTAL	153	1732	1831

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*-		
	DECEMBER 1ST 1964	1ST 9 MTHS 1964-65	FISCAL YR. 1963-64	DECEMBER 1ST 1964	1ST 9 MTHS 1964-65	FISCAL YR. 1963-64
I. <u>CERTIFICATION</u>						
GRANTED	84	522	426	1937	15833	12002
DISMISSED	25	120	103	840	5706	3443
WITHDRAWN	8	64	64	112	2385	950
TOTAL	117	706	593	2889	23924	16395
I. <u>TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	6	46	55	192	576	1305
DISMISSED	3	23	21	136	451	470
WITHDRAWN	-	2	3	-	82	233
TOTAL	9	71	79	328	1109	2008

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.



TABLE IV  
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		DECEMBER	1ST 9 MONTHS	FISCAL YR.
		1964	1964-65	1963-64
<u>III. CONCILIATION SERVICES*</u>				
REFERRED	-	632	799	
DISMISSED	1	27	17	
WITHDRAWN	-	30	46	
		<hr/>	<hr/>	<hr/>
TOTAL	1	689	862	
		<hr/>	<hr/>	<hr/>
<u>IV. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED	1	13	6	
DISMISSED	-	5	3	
WITHDRAWN	1	17	18	
		<hr/>	<hr/>	<hr/>
TOTAL	2	35	27	
		<hr/>	<hr/>	<hr/>
<u>V. DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
GRANTED	-	1	-	
DISMISSED	-	1	1	
WITHDRAWN	-	3	1	
		<hr/>	<hr/>	<hr/>
TOTAL	-	5	2	
		<hr/>	<hr/>	<hr/>
<u>VI. CONSENT TO PROSECUTE</u>				
GRANTED	-	11	41	
DISMISSED	2	13	10	
WITHDRAWN	1	36	64	
		<hr/>	<hr/>	<hr/>
TOTAL	3	60	115	
		<hr/>	<hr/>	<hr/>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1964	1ST 9 MONTHS OF FISCAL YEAR. 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	17	18
POST-HEARING VOTE	5	27	46
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	8	10
POST-HEARING VOTE	4	43	42
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>10</u>	<u>95</u>	<u>117</u>

\* INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1964	1ST 9 MONTHS OF FISCAL YEAR. 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	3	12	25
TOTAL	<u>3</u>	<u>12</u>	<u>30</u>

\* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING JANUARY 1965

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

9466-64-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. COLEMAN PACKING CO. LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ASSISTANT OFFICE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, BUYERS, SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L.-C.I.O. LOCAL No. 185 EFFECTIVE FROM FEBRUARY 20TH, 1963, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING." (25 EMPLOYEES IN THE UNIT).

9473-64-R: HOTEL, MOTEL, AND RESTAURANT EMPLOYEES' UNION, LOCAL No. 899, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HOTEL CORNWALLIS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT HOTEL AT CORNWALL, SAVE AND EXCEPT CHEF, HEAD HOUSEKEEPER, HEAD DESK CLERK, BAR MANAGER, CHIEF BUILDING SUPERINTENDENT, HEAD CLEANER, BANQUET MANAGER, HEAD WAITER, HOSTESSES AND THOSE IN MANAGEMENT RANKING ABOVE THE FOREGOING, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FINDS THAT A PERSON DESIGNATED AS HEAD CLEANER, EXERCISES MANAGERIAL FUNCTIONS AND MUST, THEREFORE, BE EXCLUDED FROM THE BARGAINING UNIT.

ON THE EVIDENCE DISCLOSED IN THE EXAMINER'S REPORT, THE BOARD FOUND THAT 19 NAMED PERSONS, WHOSE INCLUSION WAS IN DISPUTE, ARE TO BE INCLUDED IN THE BARGAINING UNIT. IN THE BOARD'S OPINION THE EVIDENCE WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF THESE PERSONS DID NOT INDICATE ANY TENABLE BASIS FOR THEIR EXCLUSION AS MEMBERS OF MANAGEMENT, OFFICE STAFF OR OTHERWISE. ON THE CONTRARY, THEIR DUTIES AND RESPONSIBILITIES MADE IT ABUNDANTLY MANIFEST THAT THEIR INCLUSION IN THE UNIT IS PROPER AND APPROPRIATE.

9510-64-R: OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 131 AFL-CIO (APPLICANT) V. TURNBULL ELEVATOR OF CANADA LIMITED (RESPONDENT) V. J.P. LOUGHRAN, NATIONAL ORGANIZER, DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, A.F.T.E., A.F.L.-C.I.O., C.L.C. (INTERVENER).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ITS HEAD OFFICE AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALES TRAINEES, ONE SECRETARY TO THE PRESIDENT AND GENERAL MANAGER, ONE SECRETARY TO THE PERSONNEL MANAGER, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (65 EMPLOYEES IN THE UNIT).



(AGREEMENT OF THE PARTIES).

THE BOARD DECLARED THAT FIVE NAMED PERSONS ARE SALES TRAINEES.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THE BOARD DECLARES THAT J. POSTLETHWAITE AND S. BECK DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER D.M. STOREY SAID:-

"I AGREE WITH THE DECISION OF THE MAJORITY WITH THE EXCEPTION OF THE DECLARATION CONCERNING S. BECK. I FIND ON THE EVIDENCE THAT BECK EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, I WOULD HAVE EXCLUDED HIM FROM THE BARGAINING UNIT."

9571-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. WALKER METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND ONE SECRETARY TO THE GENERAL MANAGER." (26 EMPLOYEES IN THE UNIT).

(AGREEMENT OF PARTIES).

ON THE EVIDENCE BEFORE IT, THE BOARD DECLARED THAT 6 NAMED PERSONS EMPLOYED AS QUALITY CONTROL LABORATORY TECHNICIANS, BY THE NATURE OF THEIR DUTIES AND RESPONSIBILITIES IN THE INSTANT CASE, ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

9709-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE VILLAGE OF FOREST HILL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT HYDRO FOREMAN, INCINERATOR SUPERVISOR, ARTIFICIAL ICE RINK MANAGER, SANITATION INSPECTOR, PARKS SUPERINTENDENT, CHIEF CLERK, ROADS SUPERINTENDENT, SEWER AND WATER WORKS SUPERINTENDENT, SUPERVISOR OF NURSES AND PERSONS ABOVE THE RANKS OF HYDRO FOREMAN, INCINERATOR SUPERVISOR, ARTIFICIAL ICE RINK MANAGER, SANITATION INSPECTOR, PARKS SUPERINTENDENT, CHIEF CLERK, ROADS SUPERINTENDENT, SEWER AND WATER WORKS SUPERINTENDENT, SUPERVISOR OF NURSES, NURSES, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LOCAL 1 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES AND BETWEEN THE RESPONDENT AND LOCAL 939 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES." (27 EMPLOYEES IN THE UNIT).

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

"I DISSENT. I SEE NO REASON TO EXCLUDE THE NURSES FROM THE BARGAINING UNIT IN THIS MATTER AND I ACCORDINGLY WOULD HAVE INCLUDED THE NURSES IN THE BARGAINING UNIT."

9716-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL -

CIO - CLC (APPLICANT) V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE TOWN OF RIVERSIDE (RESPONDENT).

UNIT: "ALL CARETAKING AND MAINTENANCE EMPLOYEES OF THE RESPONDENT IN THE TOWN OF RIVERSIDE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE LETTER FROM THE RESPONDENT'S SOLICITORS OF JANUARY 11TH, 1965, INDICATES THAT THE RESPONDENT IS NO LONGER RAISING SECTION 89 OF THE LABOUR RELATIONS ACT AS A BAR TO THIS APPLICATION. IN THESE CIRCUMSTANCES, THIS APPLICATION IS TREATED WITHOUT REGARD TO THIS ISSUE...

9727-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CARNATION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT AYLMER, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER." (4 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, MRS. D. GRAY, AN EMPLOYEE OF THE RESPONDENT CLASSIFIED AS PAYROLL CLERK, IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE FACT THAT MRS. BETTY FENTIE, AN EMPLOYEE OF THE RESPONDENT CLASSIFIED AS THE SUPERINTENDENT SECRETARY "HAS NOT DONE ANY WORK RELATING TO LABOUR RELATIONS, AND HAS NOT BEEN TOLD THAT SHE IS EXPECTED TO WORK ON LABOUR RELATIONS MATTERS" AND THE FACT THAT SHE DOES NOT KEEP PERSONNEL RECORDS TOGETHER WITH THE FACT THAT THE EXAMINER'S REPORT DOES NOT DISCLOSE THAT LABOUR RELATIONS MATTERS WILL BE HANDLED BY THE AYLMER OFFICE OF THE RESPONDENT, WE FIND THAT MRS. BETTY FENTIE IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WE THEREFORE FURTHER DECLARE THAT SHE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT."

MR. H.F. IRWIN DISSENTED AND SAID:-

I DISSENT IN RESPECT OF THE INCLUSION OF MRS. BETTY FENTIE IN THE BARGAINING UNIT.

AT THE HEARING BEFORE THE EXAMINER, MRS. FENTIE RE-AFFIRMED "THAT ONLY SHE DOES SECRETARIAL WORK FOR MR. BROWN .... AND THAT MR. BROWN IS THE SENIOR MANAGEMENT PERSON AT AYLMER AND THAT SHE BELIEVES THAT HE REPORTS TO THE TORONTO OFFICE."

AS MR. BROWN IS THE SENIOR MANAGEMENT OFFICIAL AT AYLMER, I CONSIDER THAT HE IS ENTITLED TO ONE CONFIDENTIAL SECRETARY WHO IS NOT IN THE OFFICE BARGAINING UNIT. MOREOVER, WITH THE ISSUING

OF A CERTIFICATE IT IS ALMOST A CERTAINTY THAT MR. BROWN WILL HAVE TO WRITE MEMOS AND CORRESPONDENCE ON MATTERS CONFIDENTIAL IN RESPECT OF LABOUR RELATIONS. AS MRS. FENTIE IS THE ONLY PERSON WHO PERFORMS SECRETARIAL WORK FOR MR. BROWN, I WOULD HAVE EXCLUDED HER FROM THE BARGAINING UNIT."

9771-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION; RESTAURANT, CAFETERIA & TAVERN EMPLOYEES' UNION, LOCAL 254 (APPLICANT) V. PAUL McMURRAY'S RESTAURANTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

9775-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VULCAN CONTAINERS (CANADA) LIMITED (RESPONDENT) V. VULCAN PLANT COUNCIL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (140 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE INTERVENTION FILED BY THE INTERVENER IN THIS MATTER IS WITHDRAWN AT THE REQUEST OF THE INTERVENER WITH THE CONSENT OF THE PARTIES AND BY LEAVE OF THE BOARD.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"IN VIEW OF THE CIRCUMSTANCES WHICH LED TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

9778-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT NAPANEE, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

9796-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. BRINTON CARPETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS TUFTING DIVISION AT LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

9798-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT NAPANEE, SAVE AND

EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

9817-64-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADICO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

9818-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. METROPOLITAN STORES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT STORE MANAGER, FLOORMEN, FLOORLADIES, PERSONS ABOVE THE RANKS OF STORE MANAGER, FLOORMAN AND FLOOR-LADY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

9820-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CHERNEY BROS. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (29 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 525).

9821-64-R: BRICKLAYERS', MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA No. 9 (APPLICANT) V. ROBERTSON-YATES CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9822-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. SHERTON ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

9823-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. W. A. McDougall Limited (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT



WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AREAS DEFINED IN TERMS OF A RADIUS ARE FAR FROM SATISFACTORY, AND WE ARE OF THE OPINION THAT THE REGULAR NORTH BAY AREA REQUIRES A RE-DEFINITION AND PERHAPS ENLARGEMENT. HOWEVER, SINCE THIS IS A MATTER WHICH AFFECTS MANY UNIONS AND EMPLOYERS IN THE CONSTRUCTION INDUSTRY, WE ARE NOT PREPARED TO TAKE SUCH A STEP WITHOUT GIVING INTERESTED PERSONS AN OPPORTUNITY TO MAKE REPRESENTATIONS ON THIS MATTER."

9826-64-R: LOCAL #133, INTERNATIONAL BRO. OF BOOKBINDERS, (WINDSOR ONT)(APPLICANT) V. WALKERVILLE PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SANDWICH EAST EMPLOYED IN BINDERY OPERATIONS." (4 EMPLOYEES IN THE UNIT).

9827-64-R: WINDSOR PRINTING PRESSMEN AND ASSISTANTS' UNION LOCAL #274 (APPLICANT) V. WALKERVILLE PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SANDWICH EAST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED JANUARY 21ST, 1965, IN WHICH LOCAL #133, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS WERE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT, OFFICE AND SALES STAFF."

9828-64-R: LOCAL 210, BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CL (APPLICANT) V. TECUMSEH SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CARETAKING AND MAINTENANCE WORK SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (3 EMPLOYEES IN THE UNIT).

9829-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MANNIX CO. LTD. (RESPONDENT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 526 ).

9830-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CL (APPLICANT) V. UNION CARBIDE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLASTIC PRODUCTS GROUP AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ARTISTS AND SECURITY GUARDS." (43 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT A NAMED EMPLOYEE CLASSIFIED BY THE RESPONDENT AS A SHIPPING CLERK IS NOT INCLUDED IN THE BARGAINING UNIT.

9838-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CHRYSLER TRUCK CENTRE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"WHILE THE RESPONDENT ARGUED THAT A REPRESENTATION VOTE BE TAKEN OF ITS EMPLOYEES FOLLOWING COMPLETION OF A BUILD-UP OF ITS STAFF, IT APPEARS FROM THE EVIDENCE THAT MORE THAN FIFTY PER CENT OF THE ANTICIPATED WORK FORCE IS PRESENTLY EMPLOYED BY THE RESPONDENT AND ALL CLASSIFICATIONS ARE NOW EMPLOYED."

9840-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. LEWIS ELECTRIC LIMITED, (TORONTO) (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9842-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, (APPLICANT) V. RAMER BUILDERS SUPPLIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

9846-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA., LOCAL UNION 27, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. H.G. WINTON LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE

SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

9847-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. BELMONT ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9849-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SAUNDERS FORM HARDWARE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

9853-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SIMMONDS TRANSPORT, DIVISION OF DOMINION FREIGHTWAYS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

9854-64-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. McEACHERN & FLYNN CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, DISPATCHERS, OFFICE AND SALES STAFF, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

9855-64-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. OTIS PANT MANUFACTURING CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT).

9857-64-R: UNITED PACKINGHOUSE, FOOD & ALLIED WORKERS (APPLICANT) V. NIAGARA FINEST FOODS, DIVISION OF SWIFT CANADIAN COMPANY LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, FIELDMEN, MANAGERIAL AND SUPERVISORY TRAINEES ON A FORMAL TRAINING PROGRAM AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (46 EMPLOYEES IN THE UNIT).

9859-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (78 EMPLOYEES IN THE UNIT).

9864-64-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL 1059 (APPLICANT) V. GEO. ROBSON CONST., LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9866-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. OLYMPIA ELECTRIC SERVICE (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9867-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. JACK DAMBEAU ELECTRIC LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

9868-64-R: LOCAL #28, INTERNATIONAL BRO. OF BOOKBINDERS (APPLICANT) V. THE MANERWOOD PRESS LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN AND JOURNEYWOMEN BOOKBINDERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, AND PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY." (4 EMPLOYEES IN THE UNIT).

9870-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF



AMERICA (APPLICANT) V. FRANKI CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWN OF TIMMINS AND WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT THERE MAY BE DIFFERENCES BETWEEN THE PARTIES AS TO THE NUMBER OF PERSONS IN THE BARGAINING UNIT PARTICULARLY WITH RESPECT TO EMPLOYEES WHOM THE RESPONDENT ALLEGES ARE SKILLED EMPLOYEES. THE BOARD NOTES THAT THE APPLICANT DOES NOT SEEK TO INCLUDE MACHINE OPERATOR IN THE BARGAINING UNIT. THERE WOULD APPEAR TO BE THEREFORE ONLY ONE PERSON ABOUT WHOM THERE MAY BE A DISPUTE. IT IS CLEAR FROM THE APPLICANT'S LETTER OF JANUARY 22, 1965 THAT EVEN WITH RESPECT TO THIS ONE PERSON THERE MAY NOT BE A DISPUTE. IT APPEARS TO THE BOARD, THEREFORE, THAT THIS IS A MATTER WHICH THE PARTIES THEMSELVES MAY BE ABLE TO SETTLE DURING THE COURSE OF NEGOTIATIONS. IF HOWEVER A DISPUTE ARISES, IT IS ALWAYS OPEN TO EITHER PARTY PRIOR TO THE SIGNING OF A FIRST COLLECTIVE AGREEMENT TO SEEK CLARIFICATION FROM THE BOARD UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT. IN THESE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT ADVISABLE TO HOLD A HEARING.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

9893-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. A.J. DEL PIERO ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

9897-64-R: GENERAL TRUCK DRIVERS LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. C.A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9589-64-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F.L. - C.I.O. - C.L.C. (APPLICANT) v. ASSUMPTION HIGH SCHOOL (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	17
NUMBER OF BALLOTS CAST	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

THE BOARD FOUND THAT 3 NAMED EMPLOYEES DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

9807-64-R: CANADIAN RESIN WORKERS' UNION No. 187, N.C.C.L. (APPLICANT) v. JOY BABY PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	31
NUMBER OF BALLOTS CAST	31
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	30
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

8988-64-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. BLACK'S TRANSPORT LIMITED, AND LOU'S TRANSPORT COMPANY LIMITED (RESPONDENTS). (28 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 523 ).

9108-64-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. LOU'S TRANSPORT LIMITED (RESPONDENT) (30 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, BOARD FILE No. 8988-64-R, THE BOARD FOUND THAT THE ONTARIO LABOUR RELATIONS ACT DID NOT APPLY TO THE LABOUR RELATIONS BETWEEN BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY

LIMITED IN THEIR RELATIONS WITH THE EMPLOYEES THERE CONCERNED AS THOSE RELATIONS FELL WITHIN THE EXCLUSIVE JURISDICTION OF THE CANADIAN PARLIAMENT.

HAVING REGARD TO THE BOARD'S FINDING IN THE FOREGOING CASE, THIS APPLICATION IS DISMISSED UNDER RULE 45 OF THE BOARD'S RULES OF PROCEDURE."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT FOR MY REASONS GIVEN FOR MY DISSENT IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, I WOULD NOT HAVE DISMISSED THIS APPLICATION UNDER RULE 45."

9148-64-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACK-SMITHS, FORGERS AND HELPERS (APPLICANT) V. HAMILTON BOILER WORKS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT A NAMED EMPLOYEE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOLLOWING THE HEARINGS IN THIS MATTER, THE APPLICANT BY TELEGRAM DATED JANUARY 12TH, 1965, REQUESTED LEAVE TO WITHDRAW ITS APPLICATION IN THIS MATTER.

HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT'S REQUEST WAS MADE, THE BOARD IS OF OPINION THAT THE APPLICANT'S REQUEST SHOULD BE DENIED AND THAT THIS APPLICATION SHOULD BE DISMISSED.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

9754-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"FOLLOWING THE RELEASE OF THE EXAMINER'S REPORT THE APPLICANT FILED OBJECTIONS AND REQUESTED A HEARING. AT THE HEARING IT BECAME CLEAR THAT THE APPLICANT WAS IN EFFECT SEEKING TO INTRODUCE NEW EVIDENCE. IT WAS ADMITTED THAT A COPY OF PRACTICE NOTE #4, PROCEDURE OF EXAMINER'S INQUIRY INTO DUTIES AND RESPONSIBILITIES, WAS RECEIVED BY THE APPLICANT PRIOR TO THE COMMENCEMENT OF THE EXAMINER'S INQUIRY. PARAGRAPHS 6, 9, 10, 11 AND 14 OF THIS NOTE, MAKE IT QUITE EVIDENT THAT IN THE CIRCUMSTANCES OF THIS CASE THE APPLICANT WAS NOT ENTITLED TO ADDUCE NEW EVIDENCE BEFORE THE BOARD. IN ARRIVING AT OUR DECISION, THEREFORE, WE CONFINE OURSELVES TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT (MEMBERSHIP EVIDENCE FOR TWO

PERSONS ONLY), THE REPORT OF THE EXAMINER AND THE ARGUMENTS OF THE PARTIES BASED ON THAT EVIDENCE.

THE BOARD FINDS THAT THE APPROPRIATE BARGAINING UNIT IN THIS CASE CONSISTS OF CARPENTERS AND CARPENTERS' APPRENTICES, EXCLUDING NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. WHILE THE BOARD HAS NOT AS YET DETERMINED AN APPROPRIATE GEOGRAPHIC AREA FOR HAMILTON AND DISTRICT (AND SEE ROC LATHING LTD.--O.L.R.B. MONTHLY REPORT, JUNE, 1964, P. 115) IT IS CLEAR THAT ANY SUCH AREA WOULD INCLUDE ANCASTER."

THE APPLICATION IS THEREFORE DISMISSED."

9801-64-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264, TORONTO (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY LIMITED (RESPONDENT). (287 EMPLOYEES).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A PRE-HEARING REPRESENTATION VOTE. AN EXAMINER WAS APPOINTED TO CONFER WITH THE PARTIES, TO EXAMINE THE RECORDS OF THE APPLICANT AND THE RESPONDENT AND TO MAKE THE REQUISITE ARRANGEMENTS IN CONNECTION WITH THE VOTE. AFTER THE EXAMINER HAD MET WITH THE PARTIES AS DIRECTED, THE REPRESENTATIVE OF THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION. THE BOARD IS OF OPINION THAT THE REQUEST SHOULD NOT BE GRANTED BUT THAT, HAVING REGARD TO THE STAGE AT WHICH THE REQUEST WAS MADE, THE APPLICATION SHOULD BE DISMISSED AND IT IS ACCORDINGLY DISMISSED."

9852-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 721 (APPLICANT) V. HODGSON'S STEEL & IRONWORKS LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE BEFORE IT THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT HODGSON'S STEEL & IRONWORKS LIMITED AND LOCAL UNION NO. 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS DATED FEBRUARY 13TH, 1962, WHICH AGREEMENT THE BOARD FINDS EXPIRES ON APRIL 30, 1965, COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION.

THEREFORE, PURSUANT TO SECTION 45 OF THE BOARD'S RULES OF PROCEDURE THIS APPLICATION IS UNTIMELY AND IS THEREFORE DISMISSED."

9877-64-R: THE UNITED ASSOCIATION JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL 819 (APPLICANT) V. ST. LAWRENCE MECHANICAL CONTRACTORS (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"A COLLECTIVE AGREEMENT DATED JANUARY 22ND, 1965 AND EFFECTIVE UNTIL AUGUST 31ST, 1965 BETWEEN THE APPLICANT AND THE RESPONDENT WAS FILED WITH THE BOARD.



IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

9882-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 595 BRANTFORD, ONTARIO (APPLICANT) V. HEWSON AND SON, PLASTERERS (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF THIS APPLICATION FOR CERTIFICATION CONSISTED OF FOUR DUES BOOKS AT LEAST THREE OF WHICH, ACCORDING TO THE SECRETARY-TREASURER OF THE APPLICANT, WERE NOT SIGNED BY THE EMPLOYEES IN RESPECT OF WHOM THEY WERE SUBMITTED. SUB-SECTION 1 OF SECTION 50 OF THE BOARD'S RULES OF PROCEDURE PROVIDES IN PART THAT EVIDENCE OF MEMBERSHIP SHALL NOT BE ACCEPTED BY THE BOARD UNLESS THE EVIDENCE IS SIGNED BY THE EMPLOYEE. IN THESE CIRCUMSTANCES THE APPLICATION MUST BE DISMISSED. REFERENCE IS MADE TO PAGE MANUFACTURING COMPANY LIMITED, BOARD FILE No. 5533-62-R, O.L.R.B. MONTHLY REPORT, MARCH 1963, P. 11.

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

5379-64-R: CANADIAN PRINTERS & PAPER WORKERS' UNION No. 184 N.C.C.L. (APPLICANT) V. GENERAL PRINTERS LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #194 (INTERVENER) V. AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 (INTERVENER) V. OSHAWA TYPOGRAPHICAL UNION (I.T.U.) LOCAL 969 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 57 SIMCOE STREET SOUTH, OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF (INCLUDING OFFICE SUPPLY RETAIL DIVISION), SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SECURITY GUARDS, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #194 AND PERSONS INCLUDED IN THE BOARD'S CERTIFICATE DATED SEPTEMBER 19TH, 1963, ISSUED TO THE OSHAWA TYPOGRAPHICAL UNION (I.T.U.) LOCAL 969 AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT." (66 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	61
NUMBER OF BALLOTS CAST	60
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35

HAVING REGARD TO ALL THE EVIDENCE THE BOARD FOUND THAT AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 HAD ABANDONED ITS BARGAINING RIGHTS AND THE BOARD DECLARED THAT THE AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 NO LONGER REPRESENTED THE EMPLOYEES OF THE RESPONDENT AT OSHAWA FOR WHOM IT HAD HERETOFORE BEEN THE BARGAINING AGENT.

9586-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STANTON PIPES (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (62 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	62
NUMBER OF BALLOTS CAST	62
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	41

9703-64-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. DOUGHTY & DARLING LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN PLUMBERS, STEAMFITTERS, PIPEFITTERS, WELDERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER ON REVISED VOTERS' LIST	6
NUMBER OF BALLOTS CAST	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES RESPECTING THE APPLICANT'S REQUEST THAT THE BOARD RE-CONSIDER ITS DECISION IN THIS MATTER, DATED DECEMBER 7, 1964. IN THAT DECISION THE BOARD FOUND THAT ALL JOURNEYMEN PLUMBERS, STEAMFITTERS, PIPEFITTERS, WELDERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE AN APPROPRIATE BARGAINING UNIT. THIS IS THE USUAL DESCRIPTION

OF UNITS IN CERTIFICATION CASES IN THE CONSTRUCTION INDUSTRY.

SOME EMPLOYEES OF THE RESPONDENT REGULARLY REPORT FOR WORK IN TORONTO, PICK UP TOOLS AND A TRUCK AND PROCEED TO BARRIE TO WORK, RETURNING EACH NIGHT TO TORONTO. BARRIE, OF COURSE, DOES NOT FALL WITHIN THE AREA SET OUT IN THE BARGAINING UNIT. IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO REGARD SUCH EMPLOYEES AS "IN THE EMPLOY OF THE RESPONDENT" IN THE AREA DESCRIBED IN THE BARGAINING UNIT FOR THE PURPOSES OF ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT. IF, HOWEVER, THE BARGAINING UNIT HAD BEEN PHRASED IN TERMS OF "EMPLOYED AT OR WORKING OUT OF" SAY, METROPOLITAN TORONTO, THEN THE EMPLOYEES WORKING AT BARRIE WOULD HAVE BEEN INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.

A DEPARTURE FROM OUR NORMAL PRACTICE IS NOT WARRANTED IN THIS CASE, ESPECIALLY AT THIS STAGE OF THE PROCEEDINGS. WHILE THE BOARD MAY BE PREPARED TO CONSIDER A CHANGE IN PRACTICE IN FUTURE CASES, SUCH CHANGE SHOULD NOT BE MADE UNTIL OTHER INTERESTED PERSONS IN THE CONSTRUCTION INDUSTRY HAVE HAD AN OPPORTUNITY TO EXPRESS THEIR VIEWS AND THE BOARD, IN TURN, IS IN A POSITION TO CONSIDER ALL THE RAMIFICATIONS OF SUCH A CHANGE.

THE BOARD THEREFORE CONFIRMS ITS DECISION OF DECEMBER 7, 1964, IN THIS MATTER."

9707-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. COURTLAND HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COURTLAND, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	2
NUMBER OF BALLOTS CAST	1
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	1

(BALLOT NOT COUNTED).

9729-64-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. GALT DRY CLEANING SERVICES LTD. (RESPONDENT) V. AMALGAMATED CLOTHING WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRIVER SALESMEN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

(THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW ITS APPLICATION WAS GRANTED WITH THE CONSENT OF THE INTERVENER BY LEAVE OF THE BOARD.)

NUMBER OF NAMES ON REVISED VOTERS' LIST		12
NUMBER OF BALLOTS CAST		12
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	10	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

8720-64-R: TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL UNION 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GODDARD CHICKEN HATCHERIES (RESPONDENT). (6 EMPLOYEES).

9748-64-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ATLAS FUEL OILS LIMITED (RESPONDENT). (2 EMPLOYEES).

9774-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. REXSTEEL LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE PARTIES HAVING AGREED THAT THE RESPONDENT BEING A SALES DIVISION OF VULCAN CONTAINERS (CANADA) LIMITED, HAD NO EMPLOYEES IN ITS EMPLOY ON THE DATE THE APPLICATION WAS MADE, THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT, WITH THE CONSENT OF THE RESPONDENT, BY LEAVE OF THE BOARD."

9851-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. ETOBICOKE IRONWORKS LIMITED (RESPONDENT).

9883-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT). (12 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING JANUARY

9702-64-R: MARTHA CHARTRAND 47 GAGE AVE. SCAR. MARY MCNEIL 450 WINONA DR. APT. 214 TOR. 10. ALMA MOULTON 26 FRANKDALE AVE. EAST YORK. SADIE WHITE 254 HOMEWOOD AVE. WILLOWDALE. JOE MANN 403 WINONA DR. TOR. 10 (APPLICANTS) V. INTERNATIONAL ASSOCIATION OF MACHINISTS DON MILLS LODGE DISTRICT 2113 (RESPONDENT). (DISMISSED). (652 EMPLOYEES).

(RE: PHILCO CORPORATION OF CANADA LTD.  
DON MILLS, ONTARIO).

ON NOVEMBER 30TH THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANTS APPLIED ON NOVEMBER 20TH, 1964, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, FOR



A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF PHILCO CORPORATION OF CANADA LTD. REPRESENTED BY THE RESPONDENT.

IT WOULD APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND PHILCO CORPORATION OF CANADA LTD. ON NOVEMBER 16TH, 1964.

SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT:

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR;  
OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED BETWEEN THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER AND THE DATE OF THE MAKING OF THIS APPLICATION.

IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 4TH DAY OF DECEMBER, 1964, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS NOT IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

THE HEARING WHICH HAS BEEN DIRECTED FOR MONDAY, THE 7TH DAY OF DECEMBER, 1964 IN THIS APPLICATION IS HEREBY CANCELLED, AND THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF

PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS."

ON JANUARY 15, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT

- (1) THE DOCUMENT DELIVERED TO THE BOARD ON BEHALF OF THE APPLICANT ON NOVEMBER 18, 1964, WAS INCOMPLETE AND WAS NOT ACCEPTED FOR FILING BY THE REGISTRAR FOR THAT REASON.
- (2) A PROPERLY COMPLETED APPLICATION WAS MAILED TO THE BOARD BY THE APPLICANT BY ORDINARY MAIL, SPECIAL DELIVERY, ON NOVEMBER 20, 1964 AND WAS RECEIVED BY THE BOARD ON THAT DAY, AND
- (3) THE LATTER DATE IS THE DATE OF THE MAKING OF THE APPLICATION IN THE INSTANT CASE.

IN THESE CIRCUMSTANCES AND IN VIEW OF THE CIRCUMSTANCES OUTLINED BY THE BOARD IN ITS DECISION OF NOVEMBER 30, 1964 IN THIS MATTER, THIS APPLICATION IS UNTIMELY AND IS ACCORDINGLY DISMISSED."

BOARD MEMBER R. W. TEAGLE DISSENTED AND SAID:-

"I DISSENT. WHILE I CONCUR WITH THE MAJORITY THAT THE DOCUMENT DELIVERED TO THE BOARD ON BEHALF OF THE APPLICANT ON NOVEMBER 18, 1964 WAS INCOMPLETE, IN MY VIEW THE FILING OF THE DOCUMENT SHOULD HAVE BEEN ACCEPTED AND THE APPLICANT PERMITTED TO AMEND OR ADD TO THE APPLICATION IN ORDER TO MEET THE TECHNICAL REQUIREMENTS OF THE BOARD'S RULES. IN DISMISSING THE APPLICATION, THE EMPLOYEES ARE THEREBY FORECLOSED FROM BRINGING A NEW APPLICATION FOR TERMINATION FOR A MINIMUM PERIOD OF ONE YEAR OR POSSIBLY LONGER. FOR THE ABOVE REASONS, I WOULD HAVE PROCESSED THE APPLICATION."

9819-64-R: EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY (APPLICANT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENT) (9 EMPLOYEES).

(RE: CANADIAN WIRE BRUSH COMPANY,  
BARRIE, ONTARIO)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THIS APPLICATION IS DISMISSED BY REASON OF THE NON-APPEARANCE OF THE APPLICANT."

9834-64-R: JACK GREY, ET AL (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, GENERAL TRUCK DRIVERS, LOCAL 879 (RESPONDENT) V. OUR OWN DELIVERY COMPANY LIMITED (INTERVENER). (DISMISSED). (12 EMPLOYEES).

(RE: OUR OWN DELIVERY COMPANY LIMITED,  
BRANTFORD, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT, THE TERMINATION CLAUSE OF WHICH READS AS FOLLOWS:

"THIS AGREEMENT SHALL BECOME EFFECTIVE ON THE 23RD DAY OF DECEMBER, 1963 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE 22ND DAY OF DECEMBER, 1964, AND SHALL CONTINUE IN EFFECT FROM YEAR TO YEAR THEREAFTER UNLESS EITHER PARTY SHALL GIVE WRITTEN NOTICE WITHIN SIXTY (60) DAYS BEFORE EXPIRY DATE OF EACH YEAR THEREAFTER OF ITS DESIRE TO AMEND THE AGREEMENT, PROVIDED THAT IF NOTICE IS GIVEN TO AMEND CERTAIN PORTIONS OF THE AGREEMENT, ALL OTHER PORTIONS OF THE AGREEMENT NOT REQUESTED TO BE AMENDED SHALL REMAIN IN FULL FORCE AND EFFECT."

NEITHER PARTY TO THE COLLECTIVE AGREEMENT SERVED ON THE OTHER A WRITTEN NOTICE TO BARGAIN FOR A RENEWAL OR AMENDMENT OF THE COLLECTIVE AGREEMENT.

SINCE NO NOTICE WAS SERVED BY EITHER PARTY PURSUANT TO THE PROVISIONS OF THE TERMINATION CLAUSE SET OUT ABOVE AND SINCE THIS APPLICATION WAS NOT MADE DURING THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT AS REQUIRED BY THE PROVISIONS OF SECTION 43 (2) (c) OF THE ACT, THE COLLECTIVE AGREEMENT AUTOMATICALLY RENEWED ITSELF FOR A FURTHER PERIOD OF ONE YEAR PURSUANT TO ITS TERMS AND THIS APPLICATION IS ACCORDINGLY UNTIMELY.

THE APPLICATION IS THEREFORE DISMISSED."

2858-64-R: GORDON H. MACDONALD ON HIS OWN BEHALF AND ON THE BEHALF OF THE EMPLOYEES OF AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA ON BEHALF OF LOCAL 5960 (RESPONDENT). (GRANTED). (14 EMPLOYEES).

(RE: AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED JANUARY 18TH, 1965, THAT, "WE NO LONGER CLAIM TO REPRESENT THE EMPLOYEES IN THIS BARGAINING UNIT," THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED IN

THE UNIT HEREINAFTER SET FORTH FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT:

ALL OFFICE EMPLOYEES OF THE JUNCTION PLANT, SAVE AND EXCEPT OFFICE SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, NURSE AND SECRETARY TO THE PLANT MANAGER, AND SECRETARY TO THE OFFICE MANAGER, AND PERSONS EMPLOYED IN THE PRODUCT DEVELOPMENT ENGINEERING, AND HEAT EXCHANGER ENGINEERING SECTIONS."

9860-64-R: ERNEST LINNINGTON-BRANTFORD, ONTARIO (APPLICANT) V. GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (RESPONDENT). (DISMISSED). (7 EMPLOYEES).

(RE: WM EADIE LIMITED,  
BRANTFORD, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT WAS MADE ON JANUARY 11TH, 1965.

THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF WM. EADIE LIMITED ON THE 9TH DAY OF SEPTEMBER, 1963. CONCILIATION SERVICES WERE MADE AVAILABLE TO THE RESPONDENT AND WM. EADIE LIMITED ON THE 6TH DAY OF MARCH, 1964. ON THE 29TH DAY OF DECEMBER, 1964, THE MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD IN THIS MATTER.

SINCE 30 DAYS HAVE NOT ELAPSED SINCE THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 46 (1) (B) OF THE LABOUR RELATIONS ACT, THAT THIS APPLICATION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS ACCORDINGLY DISMISSED."

9861-64-R: EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY (APPLICANTS) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENT). (DISMISSED) (9 EMPLOYEES).

(RE: CANADIAN WIRE BRUSH COMPANY,  
BARRIE, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING IN THIS MATTER, THIS APPLICATION IS ACCORDINGLY DISMISSED."



APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

2454-64-U: COUNCIL OF PRINTING INDUSTRIES OF ONTARIO (APPLICANT) V. R. J. MCCORMACK, ET AL (RESPONDENTS; (WITHDRAWN).

2539-64-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 512 (APPLICANT) V. GENERAL FREEZER LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED, NAMELY,

A THAT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT, THE RESPONDENT DID ON OR ABOUT THE 29TH AND 30TH DAYS OF SEPTEMBER, 1964, DISCRIMINATE AGAINST ONE THOMAS WILCOX, AN EMPLOYEE, BECAUSE HE WAS A MEMBER OF A TRADE UNION AND EXERCISING HIS RIGHTS AND FREEDOMS UNDER THE ACT, IN THAT THE RESPONDENT THREATENED TO DECREASE HIS WAGES IF HE DID NOT, BUT PROMISED TO INCREASE HIS WAGES IF THE SAID WILCOX DID, IN THE EXERCISE OF HIS LIMITED SUPERVISORY FUNCTIONS, DISCRIMINATE AND FIND FAULT WITH EMPLOYEES OF THE RESPONDENT WHO WERE UNION MEMBERS OR WHO WERE ENGAGING IN UNION ACTIVITIES;

B THAT CONTRARY TO SECTION 50(B) OF THE LABOUR RELATIONS ACT, THE RESPONDENT DID ON OR ABOUT THE 29TH AND 30TH DAYS OF SEPTEMBER, 1964, IMPOSE A CONDITION IN THE CONTACT OF EMPLOYMENT OF THOMAS WILCOX, AN EMPLOYEE, BECAUSE HE WAS A MEMBER OF A UNION AND EXERCISING RIGHTS UNDER THE ACT, IN THAT THE RESPONDENT THREATENED TO DECREASE HIS WAGES IF HE DID NOT, BUT PROMISED TO INCREASE HIS WAGES IF THE SAID WILCOX DID, IN THE EXERCISE OF HIS LIMITED SUPERVISORY FUNCTIONS, DISCRIMINATE AND FIND FAULT WITH EMPLOYEES OF THE RESPONDENT WHO WERE UNION MEMBERS OR WHO WERE ENGAGING IN UNION ACTIVITIES;

(C) THAT CONTRARY TO SECTION 50(C) OF THE LABOUR RELATIONS ACT, THE RESPONDENT DID ON OR ABOUT THE 29TH AND 30TH DAYS OF SEPTEMBER, 1964, BY THREAT AND BY THE IMPOSITION OF A PECUNIARY PENALTY SEEK TO COMPEL THOMAS WILCOX TO REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION AND TO REFRAIN FROM EXERCISING HIS FREEDOMS UNDER SECTION 3 OF THE ACT, IN THAT THE RESPONDENT THREATENED TO DECREASE HIS WAGES IF HE DID NOT, BUT PROMISED TO INCREASE HIS WAGES IF HE DID, IN THE EXERCISE OF HIS LIMITED SUPERVISORY FUNCTIONS, DISCRIMINATE AND FIND FAULT WITH EMPLOYEES OF THE RESPONDENT WHO WERE UNION MEMBERS OR WHO WERE ENGAGING IN UNION ACTIVITIES.

THE APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OTHER ALLEGED OFFENCES AND FOR OFFENCES ALLEGED IN RESPECT TO FRANK TRAHAN AND GILFILLAN WERE DISMISSED.

THE APPROPRIATE DOCUMENTS OF CONSENT WILL ISSUE."

9795-64-U: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. TWIN CITY LAUNDRY LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 527 ).

9804-64-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. S. MASON ET AL (RESPONDENTS).

THE APPLICATION WAS WITHDRAWN BY LEAVE OF THE BOARD WITH RESPECT TO 35 NAMED PERSONS .

THE BOARD CONSENTED TO THE INSTITUTION OF A PROSECUTION AGAINST 51 NAMED RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

"THAT THE SAID RESPONDENTS DID ENGAGE IN AN UNLAWFUL STRIKE ON AND AFTER NOVEMBER 18TH, 1964, IN CONTRAVENTION OF SUBSECTION (1) OF SECTION 54 OF THE LABOUR RELATIONS ACT."

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JANUARY

8364-64-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. DISPOSAL SERVICES COMPANY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 529 ).

8459-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. CRONIN'S LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 533 ).

9526-64-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 183 A.F. OF L-C.I.O., C.L.C. (COMPLAINANT) V. ERNIE'S CLEANING SERVICE (RESPONDENT).

9614-64-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (COMPLAINANT) V. IROQUOIS INDUSTRIAL CHEMICALS LIMITED (RESPONDENT).

9668-64-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. BLACK'S TRANSPORT LIMITED. LOU'S TRANSPORT LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, BOARD FILE NO. 8988-64-R, THE BOARD FOUND THAT THE ONTARIO LABOUR RELATIONS ACT DID NOT APPLY TO THE LABOUR RELATIONS BETWEEN BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED IN THEIR RELATIONS WITH THE EMPLOYEES THERE CONCERNED AS THOSE RELATIONS FELL WITHIN THE EXCLUSIVE JURISDICTION OF THE CANADIAN PARLIAMENT.

HAVING REGARD TO THE BOARD'S FINDING IN THE FOREGOING CASE, THIS COMPLAINT IS DISMISSED UNDER RULE 45 OF THE BOARD'S RULES OF PROCEDURE."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT FOR MY REASONS GIVEN FOR MY DISSENT IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, I WOULD NOT HAVE DISMISSED THIS APPLICATION UNDER RULE 45."

9676-64-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. LOU'S TRANSPORT LIMITED BLACK'S TRANSPORT LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, BOARD FILE NO. 8988-64-R, THE BOARD FOUND THAT THE ONTARIO LABOUR RELATIONS ACT DID NOT APPLY TO THE LABOUR RELATIONS BETWEEN BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED IN THEIR RELATIONS WITH THE EMPLOYEES THERE CONCERNED AS THOSE RELATIONS FELL WITHIN THE EXCLUSIVE JURISDICTION OF THE CANADIAN PARLIAMENT.

HAVING REGARD TO THE BOARD'S FINDING IN THE FOREGOING CASE, THIS COMPLAINT IS DISMISSED UNDER RULE 45 OF THE BOARD'S RULES OF PROCEDURE."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT FOR MY REASONS GIVEN FOR MY DISSENT IN THE BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT COMPANY LIMITED CASE, I WOULD NOT HAVE DISMISSED THIS APPLICATION UNDER RULE 45."

9686-64-U: AMALGAMATED CLOTHING WORKERS OF AMERICA (COMPLAINANT) V. WESTWOOD PANT COMPANY (RESPONDENT).

9767-64-U: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES OF ONTARIO LOCAL UNION NO. 352, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTER CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. ATLAS FUEL OILS LIMITED (RESPONDENT).

9809-64-U: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS (COMPLAINANT) V. BLACK AND DECKER LIMITED (RESPONDENT).

9811-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. LIBERTY ORNAMENTAL IRON LIMITED (RESPONDENT).

9814-64-U: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 197, IN HAMILTON, ONTARIO (COMPLAINANT) V. HOMESIDE HOUSE, 229 KENILWORTH AVE. N., HAMILTON, ONTARIO (RESPONDENT).

9854-64-U: INTERNATIONAL WOODWORKMEN'S ASSOCIATION, LOCAL 1415 (COMPLAINANT) V. SUMMERHAYES WOOD PRODUCTS LIMITED (RESPONDENT).

APPLICATION FOR ADDITION OF A PROVISION TO A COLLECTIVE AGREEMENT PURSUANT  
TO SECTION 33 (2) DISPOSED OF DURING JANUARY

9833-64-M: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) v. LOCAL 508, SAULT STE. MARIE, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES HERETO DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1 OF SECTION 33 OF THE LABOUR RELATIONS ACT.

THE FOLLOWING PROVISION IS THEREFORE ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES: "THERE SHALL BE NO STRIKES OR LOCKOUTS SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE".

BOARD MEMBER D.M. STOREY DISSENTED AND SAID:-

"I DISSENT. THE PARTIES, FOR REASONS BEST KNOWN TO THEMSELVES, DID NOT SEE FIT TO INCLUDE IN THE CURRENT AGREEMENT A "NO STRIKE" CLAUSE. THE APPLICANT NOW SEEKS TO HAVE THIS BOARD INCLUDE IN THE AGREEMENT SUCH A CLAUSE, BUT ADVANCES NO REASONS FOR ITS REQUEST.

UNDER SECTION 33(2) OF THE ACT THE BOARD HAS DISCRETIONARY POWER AS TO THE GRANTING OF SUCH A REQUEST. IN THE ABSENCE OF COMPELLING REASONS FOR THE INCLUSION OF SUCH A CLAUSE, THIS BOARD SHOULD NOT INTERFERE WITH THE COLLECTIVE BARGAINING PROCESS.

FOR THESE REASONS, I WOULD HAVE DISMISSED THE APPLICATION."

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT  
DISPOSED OF DURING JANUARY

9704-64-M: LAUNDRY DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. GARDEN CITY LAUNDRY LIMITED (APPLICANT).

(SEE INDEXED ENDORSEMENT PAGE 536 ).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION  
MEMBER) DISPOSED OF DURING JANUARY

9102-64-M: GERALD O'NEILL (COMPLAINANT) v. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 93, OF OTTAWA (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING NOTIFIED THE BOARD THAT HE HAS RECEIVED THE FINANCIAL STATEMENT WHICH THE BOARD DIRECTED THE RESPONDENT TO PROVIDE TO THE APPLICANT, THIS PROCEEDING IS ACCORDINGLY TERMINATED."



APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING  
JANUARY

9591-64-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RAYBESTOS-MANHATTAN  
(CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

9045-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL  
(APPLICANT) V. MARPO SERVICES LIMITED (RESPONDENT).

ON JANUARY 19, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"BY LETTER DATED JANUARY 14TH, 1965, THE RESPONDENT REQUESTS THAT THE BOARD RECONSIDER ITS DECISION OF AUGUST 10TH, 1964 IN THIS MATTER.

IN SUPPORT OF ITS REQUEST THE RESPONDENT ALLEGES THAT IN ADDITION TO THE SIX CARPENTERS EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION, JULY 31ST, 1964, THE RESPONDENT HAD A SUFFICIENT NUMBER OF CARPENTERS' HELPERS IN ITS EMPLOY TO MATERIALLY AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT. THE RESPONDENT SUBMITS THAT THE BOARD SHOULD SET THIS MATTER DOWN FOR HEARING IN ORDER TO ALLOW THE RESPONDENT TO ADDUCE EVIDENCE RELATING TO THE EMPLOYEES ON ITS PAYROLL ON THE DATE OF THE MAKING OF THE APPLICATION.

THE APPLICANT APPLIED FOR CERTIFICATION FOR A UNIT OF EMPLOYEES CONSISTING OF "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, WORKING IN AN AREA DEFINED BY A 25 MILE RADIUS FROM TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS AT THE RANK OF NON-WORKING FOREMAN". THE APPLICANT STATED IN ITS APPLICATION THAT THERE WERE APPROXIMATELY SIX EMPLOYEES IN THE UNIT FOR WHICH IT WAS APPLYING FOR CERTIFICATION. THE RESPONDENT IN ITS REPLY FILED WITH THE BOARD ON AUGUST 10TH, 1964 STATED THAT THE TOTAL NUMBER OF EMPLOYEES OF THE RESPONDENT ON THE JOB OR JOBS IN RESPECT OF WHICH THE APPLICATION FOR CERTIFICATION HAD BEEN MADE WAS FIVE OR SIX.

AS IS SET OUT IN PARAGRAPH 4 OF THE BOARD'S DECISION OF AUGUST 10TH, 1964, THE RESPONDENT FAILED TO FILE A LIST OF EMPLOYEES OR SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. FURTHER, AS IS SET FORTH IN THE SAME PARAGRAPH 4, THE BOARD DENIED THE RESPONDENT'S REQUEST FOR A HEARING OF THE APPLICATION ON THE GROUNDS UPON WHICH IT WAS REQUESTED. THE RESPONDENT IN ITS REPLY DID NOT CHALLENGE THE STATEMENT OF THE APPLICANT AS TO THE APPROXIMATE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT REQUESTED BY THE APPLICANT. ON THE CONTRARY, THE RESPONDENT'S REPLY INDICATES SUBSTANTIAL AGREEMENT WITH THE APPLICANT AS TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT. WE NOTE ALSO THAT THE RESPONDENT'S CHALLENGE WITH RESPECT TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WAS NOT MADE UNTIL MORE THAN FIVE MONTHS AFTER THE BOARD ISSUED ITS CERTIFICATE TO THE APPLICANT.

WE WOULD MENTION THAT THE UNIT OF EMPLOYEES COVERED BY THE

THE NINE EMPLOYEES AS EVIDENCE OF THEIR MEMBERSHIP SINCE ITS PETITION WAS FILED AFTER THE TERMINAL DATE.

ALL THE RELEVANT ISSUES RAISED IN THE INTERVENER'S REQUEST FOR RECONSIDERATION AND IN THE PETITION FILED WITH THE INTERVENER'S REQUEST WERE CONSIDERED BY THE BOARD PRIOR TO ITS DECISION DATED DECEMBER 31ST, 1964, AND THERE IS NOTHING CONTAINED IN ITS REQUEST WHICH IN THE BOARD'S OPINION WOULD CAUSE THE BOARD TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED DECEMBER 31ST, 1964, IN THIS MATTER.

THE INTERVENER'S REQUEST FOR RECONSIDERATION IS ACCORDINGLY DENIED."

INDEXED ENDORSEMENTS - CERTIFICATION

8988-64-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. BLACK'S TRANSPORT LIMITED, AND LOU'S TRANSPORT COMPANY LIMITED (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE BEFORE US IN THIS CASE ESTABLISHES THAT THE BUSINESS, OPERATIONS AND EMPLOYMENT RELATIONS OF BLACK'S TRANSPORT LIMITED ARE SO CLOSELY CONNECTED AND UNDER THE CONTROL OF LOU'S TRANSPORT COMPANY LIMITED AS, FOR ALL PRACTICAL PURPOSES, TO CONSTITUTE THEM AN INTEGRAL AND INSEPARABLE PART OF THE UNDERTAKINGS OF LOU'S TRANSPORT COMPANY LIMITED. IT IS ALSO CLEAR THAT LOU'S TRANSPORT COMPANY LIMITED IS FREQUENTLY AND REGULARLY ENGAGED IN INTER-PROVINCIAL OPERATIONS EXTENDING BETWEEN ONTARIO AND QUEBEC AND THAT TRUCKS AND EMPLOYEES OF BLACK'S TRANSPORT LIMITED FREQUENTLY AND REGULARLY PARTICIPATE IN THESE OPERATIONS. EVEN IF IT COULD BE SAID THAT THE OPERATIONS OF BLACK'S TRANSPORT LIMITED COULD SOMEHOW BE VIEWED AS SEPARATE FROM THOSE OF LOU'S TRANSPORT COMPANY LIMITED, WE WOULD BE IMPELLED TO FIND ON THE EVIDENCE BEFORE US THAT BLACK'S TRANSPORT LIMITED IS FREQUENTLY AND REGULARLY ENGAGED IN OPERATIONS EXTENDING FROM ONTARIO INTO THE PROVINCE OF QUEBEC AND THAT SUCH OPERATIONS ARE NOT CAPABLE OF SEVERANCE FROM ITS OPERATIONS WITHIN ONTARIO.

IN ALL THE CIRCUMSTANCES, THEREFORE, WE ARE BOUND TO FIND, APPLYING THE PRINCIPLES AND REASONING SET OUT IN THE TANK TRUCK TRANSPORT LTD. CASE, (1960) 25 D.L.R. (2d) 161, C.C.H. CANADIAN LABOUR LAW CASES 1960-64, ¶15,335, THAT THE ONTARIO LABOUR RELATIONS ACT DOES NOT APPLY TO THE LABOUR RELATIONS BETWEEN BLACK'S TRANSPORT LIMITED OR LOU'S TRANSPORT COMPANY LIMITED IN THEIR RELATIONS WITH THE EMPLOYEES CONCERNED IN THIS APPLICATION AS THESE RELATIONS CLEARLY FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE CANADIAN PARLIAMENT.

THE APPLICATION IS THEREFORE DISMISSED."  
BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. THE EVIDENCE SATISFIES ME THAT THE OPERATIONS

CERTIFICATE ISSUED BY THE BOARD ON AUGUST 10TH, 1964 IS CONFINED TO "ALL CARPENTERS AND CARPENTERS' APPRENTICES". THE CERTIFICATE DOES NOT COVER CARPENTERS' HELPERS WHO ARE THE ALLEGED EMPLOYEES WHOM THE RESPONDENT NOW IS REQUESTING BE INCLUDED IN THE LIST OF EMPLOYEES IN THE BARGAINING UNIT.

IN ARRIVING AT ITS DECISION OF AUGUST 10TH, 1964, THE BOARD CONSIDERED ALL THE EVIDENCE BEFORE IT, NAMELY, THE INFORMATION AND REPRESENTATIONS CONTAINED IN BOTH THE APPLICATION FILED BY THE APPLICANT AND THE REPLY FILED BY THE RESPONDENT. AT THAT TIME NO CHALLENGE WAS MADE WITH RESPECT TO THE NUMBER OF EMPLOYEES APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT. HAVING REGARD TO THE FOREGOING CONSIDERATIONS AT THE PERIOD OF TIME THAT HAS ELAPSED SINCE THE BOARD MADE ITS DETERMINATION IN THIS MATTER, WE ARE OF THE OPINION THAT THE BOARD SHOULD NOT ENTERTAIN FURTHER EVIDENCE OR REPRESENTATIONS BY THE RESPONDENT AT THIS TIME.

THE RESPONDENT'S REQUEST FOR A RECONSIDERATION OF THE BOARD'S DECISION OF AUGUST 10TH, 1964, ACCORDINGLY, IS DENIED."

ON JANUARY 29, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS CAREFULLY CONSIDERED THE REPRESENTATIONS CONTAINED IN THE RESPONDENT'S LETTER OF JANUARY 20TH, 1965 AND THE REPRESENTATIONS CONTAINED IN THE APPLICANT'S LETTER OF JANUARY 25TH, 1965.

BY WAY OF CLARIFICATION OF THE MATTERS RAISED IN PARAGRAPH 5 OF THE RESPONDENT'S LETTER WE WOULD STATE THAT THE "CARPENTERS' APPRENTICES" INCLUDED IN THE BARGAINING UNIT IN THE BOARD'S CERTIFICATE OF AUGUST 10TH, 1964 REFERS EXCLUSIVELY TO INDENTURED OR REGISTERED APPRENTICES.

NO NEW ISSUES HAVING BEEN RAISED BY THE RESPONDENT THE BOARD FINDS NO REASON TO ALTER ITS DECISIONS OF AUGUST 10TH, 1964 AND JANUARY 19TH, 1965."

9789-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. J.E. RUMBALL LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE INTERVENER HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED DECEMBER 31ST, 1964, IN THIS MATTER ON THE GROUNDS THAT WHILE THE INTERVENER FILED RECEIPTS AS EVIDENCE OF MEMBERSHIP ON BEHALF OF CERTAIN EMPLOYEES, THE BUSINESS MANAGER OF THE INTERVENER HAD THE MEMBERSHIP CARDS IN HIS POSSESSION AND HAD WEATHER CONDITIONS PERMITTED, HE WOULD HAVE HAD THEM AVAILABLE AT THE HEARING IN THIS MATTER. IN ADDITION, THE INTERVENER HAS FILED A PETITION SIGNED BY NINE PERSONS WHO ARE INCLUDED IN THE BARGAINING UNIT.

SINCE SECTION 50 OF THE BOARD'S RULES OF PROCEDURE WOULD PRECLUDE THE BOARD FROM ACCEPTING WRITTEN EVIDENCE OF MEMBERSHIP AFTER THE TERMINATION DATE OF THIS APPLICATION, THE INTERVENER COULD NOT HAVE FILED MEMBERSHIP CARDS AT THE HEARING AS IT STATED IT WAS PREPARED TO DO. IN ADDITION SECTION 50 WOULD PRECLUDE THE BOARD FROM ACCEPTING THE PETITION SIGNED BY

IN QUESTION OF BLACK'S TRANSPORT LIMITED BRING IT WITHIN THE REASONING OF LORD PORTER IN THE CASE OF ATTORNEY-GENERAL FOR ONTARIO V. WINNER, (1954) A.C. 541. IN THIS RESPECT LORD PORTER STATED AT P. 582:

THE QUESTION IS WHETHER IN TRUTH AND IN FACT THERE IS AN INTERNAL ACTIVITY PROLONGED OVER THE BORDER IN ORDER TO ENABLE THE OWNER TO EVADE PROVINCIAL JURISDICTION OR WHETHER IN PITH AND SUBSTANCE IT IS INTER-PROVINCIAL

IN MY OPINION THERE IS NO SUCH INTER-PROVINCIAL ACTIVITY INVOLVED IN THE OPERATIONS OF BLACK'S TRANSPORT LIMITED WHICH WOULD MAKE THE CHARACTER OF THOSE OPERATIONS IN PITH AND SUBSTANCE ANYTHING OTHER THAN INTERNAL OPERATIONS WITHIN THE PROVINCE OF ONTARIO.

IN THE RESULT, I WOULD HAVE FOUND THAT THE LABOUR RELATIONS BETWEEN BLACK'S TRANSPORT LIMITED AND THE EMPLOYEES IN QUESTION ARE SUBJECT TO THE ONTARIO LABOUR RELATIONS ACT."

9820-64-4: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.L.D.C. V. CHERNEY BROS. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THERE WAS FILED IN THIS MATTER PRIOR TO THE TERMINAL DATE, A PHOTOSTAT OF A DOCUMENT SIGNED BY SOME OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS INDICATIVE OF OPPOSITION BY THESE EMPLOYEES TO THE APPLICATION OF THE APPLICANT. AT THE HEARING, COUNSEL FOR THE EMPLOYEES WHO SIGNED THE DOCUMENT FILED THE ORIGINAL DOCUMENT THAT WAS SIGNED IN ORDER TO VERIFY AND AUTHENTICATE THE PHOTOSTAT WHICH WAS FILED PRIOR TO THE TERMINAL DATE. MR. GORDON, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, TESTIFIED CONCERNING THE PREPARATION AND CIRCULATION OF THE DOCUMENT.

IT WOULD APPEAR FROM MR. GORDON'S EVIDENCE THAT THE DOCUMENT WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION, ALTHOUGH PREPARED BY MR. GORDON, WAS ORIGINATED BY A MR. DOLMAN, WHO WAS EMPLOYED BY THE RESPONDENT AS A SALESMAN. IT WAS MR. DOLMAN WHO INITIATED THE IDEA OF OPPOSING THE APPLICANT'S APPLICATION, WHO CONDUCTED MEETINGS WHICH LED TO THE CIRCULATION OF THE DOCUMENT AND WHO SUGGESTED THAT THE EMPLOYEES RETAIN COUNSEL TO REPRESENT THEM. IT WOULD ALSO APPEAR THAT MR. DOLMAN AND OTHER SALESMEN HAVE CONTRIBUTED MOST OF THE MONEY TO PAY FOR THE EXPENSES INCURRED BY THE EMPLOYEES IN OPPOSING THIS APPLICATION. HOWEVER, MR. DOLMAN WAS NOT CALLED TO TESTIFY AND WE THEREFORE HAVE NO EVIDENCE OTHER THAN HEARSAY CONCERNING THE ORIGINATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION.

IN VIEW OF THE FACT THAT WHILE WE HAVE EVIDENCE CONCERNING THE PREPARATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT, TO THE APPLICATION OF THE APPLICANT, WE DO NOT HAVE EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENT AND HAVING REGARD TO THE REASONS GIVEN BY THE BOARD IN WEYERHAEUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 599, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE



APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

9829-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MANNIX CO. LTD. (RESPONDENT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (INTERVENER).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"AT THE HEARING IN THIS MATTER THE BOARD RULED THAT THE INTERVENER, NOT CLAIMING TO REPRESENT EMPLOYEES OF THE RESPONDENT OR TO BE THE BARGAINING AGENT OF ANY OF RESPONDENT'S EMPLOYEES AND BEING IN EFFECT A COMPLETE STRANGER TO THE PROCEEDINGS, WAS NOT ENTITLED TO PARTICIPATE IN THE PROCEEDINGS...

THIS APPLICATION FOR CERTIFICATION WAS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. THE RESPONDENT COMPANY SUBMITS THAT FOR THE PURPOSES OF THIS APPLICATION IT IS NOT AN EMPLOYER OPERATING A BUSINESS IN THE "CONSTRUCTION INDUSTRY" AS DEFINED IN SECTION 1(1)(DA) OF THE ACT. THAT SECTION PROVIDES AS FOLLOWS:

"CONSTRUCTION INDUSTRY" MEANS THE BUSINESSES THAT ARE ENGAGED IN CONSTRUCTING, ALTERING, DECORATING, REPAIRING OR DEMOLISHING BUILDINGS, STRUCTURES, ROADS, SEWERS, WATER OR GAS MAINS, PIPE LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF.

THE RESPONDENT IS A GENERAL CONTRACTOR AND WITHOUT QUESTION ITS NORMAL OPERATIONS WOULD FALL WITHIN THE PROVISIONS OF SECTION 1(1)(DA). IN THE PRESENT CASE THE RESPONDENT IS ENGAGED IN "STRIPPING THE OVERBURDEN" ON A SITE WHERE OPEN-STRIP MINING OPERATIONS WILL ULTIMATELY BE CONDUCTED. THE RESPONDENT'S CONTRACT IS CONFINED TO THE STRIPPING OPERATION. THE EQUIPMENT BEING USED TO PERFORM THE WORK CONSISTS OF SCRAPERS, BULLDOZERS, SHOVELS, DRAG LINES AND SERVICE VEHICLES.

THE RESPONDENT CONCEDES THAT EXCAVATION WORK DONE IN CONNECTION WITH THE ERECTION OF A BUILDING OR DAM WOULD FALL WITHIN SECTION 1(1)(DA) BUT CONTENDS THAT BECAUSE THE ULTIMATE PURPOSE OF THE WORK HEREIN QUESTION IS MINING, THIS TAKES THE STRIPPING OPERATION OUT OF SECTION 1(1)(DA). IF THE MINING COMPANY ITSELF HAD UNDERTAKEN THE STRIPPING WORK, THIS ARGUMENT MIGHT HAVE SOME VALIDITY ESPECIALLY IN VIEW OF THE DEFINITION OF CONSTRUCTION INDUSTRY IN TERMS OF "BUSINESSES". BUT THE USE OF THIS TERM, THE NATURE OF THE RESPONDENT BUSINESS, THE NATURE OF THE PARTICULAR WORK IN QUESTION AND THE EQUIPMENT IN USE ALL COMBINE TO PERSUADE US THAT THE PRESENT OPERATION FALLS WITHIN SECTION 1(1)(DA) AND MORE PARTICULARLY WITHIN THE PHRASE "OTHER WORKS" AS USED IN THAT SECTION.

THE BOARD THEREFORE FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

THE APPLICANT SEEKS AN "ALL EMPLOYEE" UNIT INSTEAD OF ITS USUAL CRAFT UNIT. THE RESPONDENT APPARENTLY HAS NO OBJECTIONS TO SUCH A UNIT. HOWEVER, IT APPEARS THAT AS AT THE DATE OF THE HEARING THE BARGAINING UNIT CONSISTED SOLELY OF PERSONS WHOM THE APPLICANT USUALLY REPRESENTS IN ITS CRAFT UNIT. IT DID NOT CONTAIN OTHER CLASSIFICATIONS WHICH, UNDER RESPONDENT'S CONSTRUCTION SCHEDULE, WOULD BE HIRED IN THE NEAR FUTURE. MORE SPECIFICALLY, WHILE THE RESPONDENT INTENDS TO EMPLOY TRUCK DRIVERS AND LABOURERS, NEITHER OF THESE CLASSIFICATIONS WAS IN RESPONDENT'S EMPLOY UP TO THE DATE OF THE HEARING.

UNDER THE PROVISIONS OF SECTION 92(2) OF THE LABOUR RELATIONS ACT THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION IS MADE. AS A GENERAL RULE, IT IS NOT THE POLICY OF THE BOARD TO CONSIDER "BUILD-UP" WHERE THE APPLICATION IS FOR A CRAFT GROUP. IN OUR VIEW, HOWEVER, DIFFERENT CONSIDERATIONS MAY APPLY WHERE THE APPLICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT IS FOR AN ALL-EMPLOYEE UNIT. WE ARE NOT UNMINDFUL OF THE DIFFICULTIES WHICH MAY ARISE WHERE ONE UNION REPRESENTS EMPLOYEES CLAIMED BY ANOTHER UNION TO FALL UNDER ITS JURISDICTION OR WHERE AN EMPLOYER ASSIGNS WORK TO EMPLOYEES REPRESENTED BY ONE UNION AND THAT WORK IS CLAIMED BY ANOTHER UNION TO COME UNDER ITS JURISDICTION. WHILE THE BOARD, IN CERTIFICATION CASES, IS NORMALLY CONCERNED WITH REPRESENTATION AND NOT JURISDICTIONAL CLAIMS (AND SEE SECTION 66 OF THE LABOUR RELATIONS ACT), WHERE, AS HERE, LACK OF REPRESENTATION MAY ULTIMATELY LEAD TO OTHER DIFFICULTIES, THIS IS A FACTOR WHICH OUGHT TO BE TAKEN INTO ACCOUNT IN DETERMINING THE APPROPRIATE BARGAINING UNIT.

SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING RESPECTING THE STATUS OF PERSONS CLAIMED TO EXERCISE MANAGERIAL FUNCTIONS, THE ATTENTION OF THE PARTIES IS DIRECTED TO SECTION 79(2) OF THE LABOUR RELATIONS ACT.

THE BOARD DESIRES TO POINT OUT THAT AREAS DEFINED IN TERMS OF A RADIUS ARE FAR FROM SATISFACTORY, AND THE BOARD IS OF THE OPINION THAT THE REGULAR TIMMINS AREA REQUIRES A RE-DEFINITION AND PERHAPS ENLARGEMENT. THE BOARD WAS NOT PREPARED IN THIS CASE TO TAKE SUCH A STEP BECAUSE OTHER INTERESTED PERSONS HAD NOT BEEN GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS ON THIS MATTER."

BOARD MEMBER R. W. TEAGLE DISSENTED AND SAID:-

"I DISSENT FROM THE FINDING OF THE BOARD THAT THE APPLICATION IS ONE FALLING WITHIN SECTION 92 OF THE ACT. IN MY OPINION, THE WORK HERE DOES NOT COME WITHIN THE PROVISIONS OF SECTION 1(1)(DA)."

INDEXED ENDORSEMENT - PROSECUTION

9795-64-u: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION,  
LOCAL 351 (APPLICANT) V. TWIN CITY LAUNDRY LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT, LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION, LOCAL 351, APPLIES FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

THE APPLICANT WAS CERTIFIED AS COLLECTIVE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON THE 19TH DAY OF NOVEMBER, 1964.

BY LETTER DATED NOVEMBER 24TH, 1964, THE APPLICANT GAVE NOTICE TO BARGAIN TO THE RESPONDENT. THIS LETTER WAS ON THE LETTERHEAD OF THE APPLICANT LOCAL UNION AND BORE THE SIGNATURE OF MR. TOM CORRIGAN WHO DESCRIBED HIMSELF AS INTERNATIONAL REPRESENTATIVE.

FOLLOWING THE GIVING OF THIS NOTICE BY THE APPLICANT, THE PARTIES MADE ARRANGEMENTS TO MEET AND DID MEET ON DECEMBER 10TH, 1964, AT 2:00 P.M. THIS MEETING WAS ADJOURNED UNTIL 5:00 P.M. ON THE SAME DAY SO THAT THE APPLICANT COULD MORE CONVENIENTLY APPEAR WITH A "BARGAINING COMMITTEE" CONSISTING OF CERTAIN EMPLOYEES OF THE RESPONDENT. THIS COMMITTEE WAS LATER DESCRIBED BY THE APPLICANT AS BEING ADVISORY TO THE BARGAINING COMMITTEE PROPER WHICH CONSISTED OF MR. CORRIGAN AND THE BUSINESS AGENT OF THE LOCAL UNION.

AT 5:00 P.M. THE PARTIES MET AGAIN BUT THE EMPLOYEES CONSTITUTING THE "ADVISORY COMMITTEE" DID NOT APPEAR. THE APPLICANT THEN REQUESTED THAT NEGOTIATIONS PROCEED IN ANY EVENT, BUT THE RESPONDENT REFUSED TO PROCEED IN THE ABSENCE OF THE EMPLOYEES.

THE RESPONDENT TOOK THE POSITION THAT IT IS REQUIRED TO BARGAIN ONLY WITH THE AUTHORIZED REPRESENTATIVES OF THE CERTIFIED TRADE UNION. UNDER THE LABOUR RELATIONS ACT AS AMENDED IT IS NOT NECESSARY FOR ANY EMPLOYEE AS SUCH TO APPEAR IN COLLECTIVE BARGAINING NEGOTIATIONS. IT IS THE TRADE UNION WHICH IS THE BARGAINING AGENT AND THAT AGENT MAY CARRY ON ITS BARGAINING ACTIVITIES AS IT DEEMS BEST. A TRADE UNION, OF COURSE, CAN ONLY ACT THROUGH ITS OWN AUTHORIZED OFFICERS, AGENTS OR EMPLOYEES AND AN EMPLOYER MAY QUITE PROPERLY REQUIRE ANY PERSON SEEKING TO NEGOTIATE WITH IT TO ESTABLISH HIS AUTHORITY TO DO SO. IT IS NOT NECESSARY FOR THE DECISION OF THIS CASE TO SPELL OUT WHAT MIGHT CONSTITUTE THE ADEQUATE ESTABLISHMENT OF ANY PERSON'S AUTHORITY TO CARRY ON BARGAINING ON BEHALF OF A TRADE UNION. IN THE INSTANT CASE THE UNCONTRADICTED EVIDENCE IS THAT MR. CORRIGAN WAS AN AUTHORIZED REPRESENTATIVE OF THE INTERNATIONAL UNION INVOLVED AND THAT HE WAS FURTHER AUTHORIZED BY RESOLUTION OF THE APPLICANT LOCAL UNION TO CARRY ON COLLECTIVE BARGAINING NEGOTIATIONS ON ITS BEHALF. THE EVIDENCE ALSO SUPPORTS THE CONCLUSION THAT MR. CORRIGAN WAS KNOWN TO THE RESPONDENT TO ACT IN THAT CAPACITY AND THAT HE HAD SO ACTED FOR SOME TIME. IT APPEARS FURTHER THAT MR. CORRIGAN AUTHORITY TO NEGOTIATE ON BEHALF OF THE APPLICANT WAS NOT QUESTIONED BY THE RESPONDENT UNTIL THE MAKING OF THIS APPLICATION. IN THE LIGHT OF THESE CIRCUMSTANCES THE BOARD CONCLUDES THAT THE RESPONDENT WAS N

JUSTIFIED IN ITS REFUSAL TO NEGOTIATE WITH THE APPLICANT THROUGH ITS AGENT, MR. CORRIGAN, ON THE DATE IN QUESTION.

THE MISAPPREHENSION ENTERTAINED BY THE RESPONDENT AS TO MR. CORRIGAN'S AUTHORITY APPEARS TO HAVE ARISEN OUT OF THE CONFUSION RELATING TO THE ARRANGEMENTS WITH RESPECT TO THE APPEARANCES OF THE "BARGAINING COMMITTEE" OF EMPLOYEES OF THE RESPONDENT. THIS MISAPPREHENSION CANNOT IN ITSELF BE INTERPRETED AS BAD FAITH ON THE PART OF THE RESPONDENT. AT THE HEARING IN THIS MATTER COUNSEL FOR THE RESPONDENT STATED THAT HE WAS PREPARED TO NEGOTIATE AT ANY TIME WITH THE AUTHORIZED REPRESENTATIVE OF THE APPLICANT.

IN VIEW OF THIS UNDERTAKING - WHICH SHOULD BE CONSTRUED IN THE LIGHT OF THE BOARD'S FINDING THAT MR. CORRIGAN WAS THE AUTHORIZED REPRESENTATIVE OF THE APPLICANT AT ALL MATERIAL TIMES - THE BOARD CONCLUDES THAT NO USEFUL PURPOSE WOULD BE SERVED BY GRANTING CONSENT TO THE INSTITUTION OF A PROSECUTION.

THE APPLICATION IS DISMISSED."

INDEXED ENDORSEMENTS- SECTION 65

8364-64-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. DISPOSAL SERVICES COMPANY (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON JANUARY 3RD, 1964, THE COMPLAINANT UNION WAS CERTIFIED AS THE BARGAINING AGENT FOR A UNIT OF THE EMPLOYEES OF THE RESPONDENT WHICH INCLUDED THE AGGRIEVED EMPLOYEE, THOMAS WEIR. FOLLOWING CERTIFICATION, A NUMBER OF MEETINGS WERE HELD BETWEEN THE UNION AND THE EMPLOYER TO DISCUSS THE MAKING OF A COLLECTIVE AGREEMENT. WEIR, WHO WAS ACTIVE IN UNION AFFAIRS, ATTENDED THESE MEETINGS AS A MEMBER OF THE UNION'S NEGOTIATING COMMITTEE. CONCILIATION SERVICES WERE LATER GRANTED AND ON OR ABOUT APRIL 13TH, 1964, THE MATTER WAS DEALT WITH BY A CONCILIATION OFFICER. CONCILIATION SERVICES DID NOT PRODUCE A COLLECTIVE AGREEMENT AND NO SUCH AGREEMENT HAD BEEN REACHED BETWEEN THE PARTIES AT THE TIME OF THE INCIDENT WHICH GAVE RISE TO THIS COMPLAINT, NAMELY, THE DISCHARGE OF WEIR FROM THE RESPONDENT'S EMPLOY ON APRIL 20TH, 1964.

THE BUSINESS OPERATIONS OF THE RESPONDENT ON APRIL 20TH WERE, AND HAD BEEN FOR SOME TIME PRIOR THERETO, PLAGUED WITH FINANCIAL DIFFICULTY AND WERE IN A STATE OF RE-ORGANIZATION. ON THIS DATE, MANAGEMENT ASSEMBLED ITS EMPLOYEES FOR A MEETING IN THE COMPANY CAFETERIA TO LISTEN TO A TALK BY MAX SOLOMON, THE OWNER OF THE RESPONDENT. AT THE COMMENCEMENT OF THE MEETING, SOLOMON, WHO HAD TAKEN A POSITION AT A TABLE IN FRONT OF THEM, TOLD THE EMPLOYEES THAT HE WANTED THEM TO SIGN A DOCUMENT WHEREIN, AMONG OTHER THINGS, IT WAS STATED THAT THEY AGREED.

"TO CO-OPERATE AND TO WORK TO THE BEST OF THEIR ABILITY WITH MR. SOLOMON UNTIL THE END OF MAY, 1964, WITH NO OUTSIDE INTERFERENCE WHATSOEVER



AT WHICH TIME HE WILL OUTLINE THE POLICY OF THE COMPANY TO US".  
(EMPHASIS ADDED).

FROM WHAT HE SAID, SOLOMON MADE IT QUITE PLAIN TO THE EMPLOYEES THAT IT WOULD BE BETTER FOR ANY OF THEM WHO DID NOT WISH TO SIGN THE DOCUMENT "TO RESIGN". HE THEN PROCEEDED TO CALL OUT, IN ALPHABETICAL ORDER, THE NAMES OF THE EMPLOYEES. AS THEIR NAMES WERE CALLED, EACH EMPLOYEE WAS EXPECTED TO GO TO THE FRONT TABLE AND SIGN THE DOCUMENT. AFTER HE HAD CALLED OUT THE NAMES OF AND A LARGE NUMBER OF THE EMPLOYEES PRESENT HAD GONE TO THE FRONT TABLE AND SIGNED THE DOCUMENT, SOLOMON CALLED OUT WEIR'S NAME, WHICH WAS AMONG THE LAST NAMES LISTED ON THE DOCUMENT. WHILE THE TESTIMONY OF THE WITNESSES ON THIS POINT VARIED TO SOME EXTENT, WE ARE CONSTRAINED TO BELIEVE AND MUST SO FIND THAT WHEN WEIR'S NAME WAS CALLED THE CONVERSATION AND EVENTS WHICH THEN ENSUED WERE SOMETHING TO THE FOLLOWING EFFECT:-

WEIR SAID, "YOU KNOW WHERE I STAND MAX". WEIR THEN STARTED TO WALK TO THE DOOR, APPARENTLY TO LEAVE THE MEETING, ADDING AS HE DID SO, "I MIGHT AS WELL GO". AT THIS JUNCTURE, SOLOMON SAID, "THIS IS THE END". WEIR WHO WAS BY THIS TIME AT THE DOOR AND ABOUT TO LEAVE, QUERIED, "DOES THIS MEAN THAT I AM FIRED? IF SO YOU WILL HAVE TO SAY IT, I WON'T QUIT". SOLOMON THEREUPON REPLIED, "YOU ARE FIRED". WEIR THEN SAID, "THANK YOU" AND WALKED OUT.

WHEN WEIR RETURNED TO THE COMPANY OFFICE THE NEXT DAY TO OBTAIN HIS UNEMPLOYMENT INSURANCE BOOK HE AGAIN SPOKE TO SOLOMON WHO TOLD HIM,

"I AM SORRY I HAD TO DO THIS BUT I HAVE TO LOOK AFTER MYSELF".

IT WOULD APPEAR THAT THERE WERE A FEW EMPLOYEES WHO DID NOT SIGN THE DOCUMENT WHO REMAINED IN THE EMPLOY OF THE RESPONDENT AND THAT WEIR WAS THE ONLY ONE WHO WAS FIRED.

WHILE THE RESPONDENT WENT TO SOME LENGTHS IN THE PRESENTATION OF EVIDENCE TO QUESTION WEIR'S QUALIFICATIONS AND WORK RECORD AS A MECHANIC, IT WAS THE OPINION OF THE RESPONDENT'S WITNESS, JAMES STEWART, THE COMPANY SUPERINTENDENT, THAT WEIR'S DISCHARGE WAS NOT IN ANY WAY RELATED TO HIS QUALIFICATIONS OR WORK RECORD, BUT RATHER TO WHAT TOOK PLACE AT THE MEETING. ALSO, S. KAM, ANOTHER COMPANY WITNESS, STATED IN HIS TESTIMONY THAT HE SUBMITTED A REPORT ON WEIR TO MANAGEMENT, BUT THAT HE DID NOT DO THIS UNTIL AFTER THE MEETING OF APRIL 20TH, BY WHICH TIME, OF COURSE, WEIR HAD ALREADY BEEN DISCHARGED. A COPY OF THIS REPORT, FILED IN EVIDENCE AS EXHIBIT 1, HOWEVER, BEARS AN ENTRY AT THE BOTTOM THEREOF, IN WHAT WE ARE TOLD BY KAM, IS THE HANDWRITING OF SOLOMON READING AS FOLLOWS: "NOW YOU MAY DISCHARGE HIM". THERE WAS NO INTIMATION WHATEVER BY KAM IN HIS TESTIMONY THAT HE HAD MADE ANY SUGGESTION OR RECOMMENDATION TO SOLOMON OR ANY ONE ELSE IN MANAGEMENT, EITHER BEFORE OR AFTER WEIR WAS DISCHARGED AT THE MEETING, THAT WEIR SHOULD BE FIRED. IT IS

ALSO INTERESTING TO OBSERVE THAT THE DOCUMENT, BEARING THE SIGNATURES OF THE EMPLOYEES WHO SIGNED IT AT THE MEETING, CONTAINS, OPPOSITE THE NAME OF THOMAS WEIR, THE WORDS, "FIRED ON RECOMMENDATION OF SUPERVISOR S. KAM". COUNSEL FOR THE COMPLAINANT ARGUES, AND WE THINK THE INFERENCE IS DIFFICULT TO RESIST, THAT THESE FACTS EVIDENCE AN ATTEMPT BY SOLOMON, CONJURED UP IN HINDSIGHT, TO PROVIDE ANOTHER REASON FOR WEIR'S DISCHARGE WHICH DID NOT EXIST AT THE TIME AND TO DIVERT ATTENTION FROM THE ACTUAL REASON FOR HIS DISCHARGE.

IT IS ARGUED ON BEHALF OF THE RESPONDENT THAT THE EVENTS WHICH TOOK PLACE AT THE MEETING ESTABLISH THAT WEIR WAS LAWFULLY AND JUSTIFIABLY FIRED FOR GOOD AND SUFFICIENT CAUSE. IN THIS RESPECT, IT IS CONTENDED THAT IT IS OBVIOUS FROM THE EVIDENCE THAT WEIR DELIBERATELY INSULTED AND CHALLENGED SOLOMON'S AUTHORITY AS AN EMPLOYER IN THE PRESENCE OF HIS EMPLOYEES. IT IS CONTENDED THAT WEIR DID THIS IN ORDER TO PROVOKE AND MANOEUVRE SOLOMON INTO A POSITION WHICH WOULD LEAVE SOLOMON NO ALTERNATIVE, IF THE LATTER WAS TO RETAIN THE RESPECT OF AND AUTHORITY OVER HIS EMPLOYEES, BUT TO DISCHARGE HIM. IN OTHER WORDS, THE CLAIM IS THAT WEIR DELIBERATELY ENGINEERED HIS OWN DISMISSAL IN ORDER TO BUILD A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. IT IS CLAIMED ALSO THAT THE DOCUMENT WHICH THE EMPLOYEES WERE BEING ASKED TO SIGN MERELY ASKED FOR THEIR SIGNIFICATION OF CO-OPERATION IN THE FACE OF THE COMPANY'S ADVERSE FINANCIAL CONDITION. COUNSEL FOR THE RESPONDENT ALSO TOOK THE POSITION THAT, WHILE, IN THE CIRCUMSTANCES, THE WORDS "OUTSIDE INTERFERENCE" WERE DIRECTED AT ALL FORMS OF OUTSIDE INTERFERENCE, THEY MUST HAVE BEEN DIRECTED PRIMARILY AT INTERFERENCE BY FORMER OWNERS AND NOW COMPETITORS OF THE RESPONDENT'S BUSINESS. IT WAS, HOWEVER, FRANKLY ACKNOWLEDGED BY SOLOMON IN HIS TESTIMONY THAT THE OUTSIDE INTERFERENCE CONTEMPLATED BY THE COMPANY INCLUDED INTERFERENCE FROM THE COMPLAINANT UNION.

COUNSEL FOR THE RESPONDENT ARGUES THAT THE UNION IS NOT ENTITLED TO INVOKE THE REMEDIAL PROVISIONS OF SECTION 65 OF THE ACT BECAUSE IT HAS FAILED TO PROVE THAT WEIR'S EMPLOYMENT WAS TERMINATED, AS HE STATES, "BY REASON ONLY OF THE FACT THAT HE WAS A MEMBER OF A TRADE UNION". EVEN IF WE WERE TO ACCEPT THE FACT THAT THERE WERE OTHER REASONS FOR HIS DISCHARGE, IT IS, IN OUR VIEW, SUFFICIENT, IN THE CIRCUMSTANCES OF THE PRESENT CASE, TO CONSTITUTE A VIOLATION OF THE ACT IF ONE OF THE REASONS FOR HIS DISCHARGE WAS THAT HE WAS A MEMBER OF THE UNION. IN CONSEQUENCE, APART FROM ANY QUESTION AS TO THE EXTENT TO WHICH ANY OTHER REASONS FOR HIS DISCHARGE MIGHT AFFECT THE NATURE AND QUANTUM OF RELIEF (AND WE ARE UNABLE TO FIND ON THE EVIDENCE THAT THERE WERE ANY SUCH OTHER REASONS CAPABLE OF AFFECTING THIS) THE AGGRIEVED EMPLOYEE IS ENTITLED TO COMPLAIN AND CLAIM RELIEF UNDER SECTION 65.

IN ALL THE CIRCUMSTANCES, THE CONCLUSION IS INESCAPABLE, THAT, APART FROM ANYTHING ELSE WHICH THE COMPANY SOUGHT TO ACHIEVE FROM HAVING THE EMPLOYEES SIGN THE DOCUMENT, WHAT MANAGEMENT WANTED AND SOUGHT WAS IN EFFECT AN UNDERTAKING FROM THE EMPLOYEES THAT THEY WOULD NOT SUPPORT THE UNION AND WOULD RELINQUISH THEIR RIGHTS TO COLLECTIVE BARGAINING UNDER THE LABOUR RELATIONS ACT UNTIL AT LEAST THE END OF MAY, 1964. IT WAS MADE ABUNDANTLY PLAIN THAT, IF ANY OF THE EMPLOYEES WAS NOT PREPARED TO GIVE THIS UNDERTAKING, SUCH

EMPLOYEE WOULD BE EXPECTED TO RESIGN. BY ASKING THE EMPLOYEES TO SIGN THE DOCUMENT, THE COMPANY WAS CLEARLY, FOR ALL PRACTICAL PURPOSES, ASKING THEM TO SIGN, WHAT COULD ONLY BE CONSTRUED AS A SPECIES OF "YELLOW-DOG" CONTRACT IN VIOLATION OF THE LABOUR RELATIONS ACT. IT IS ARGUED, HOWEVER, THAT SINCE THERE WERE OTHER EMPLOYEES WHO DID NOT SIGN THE DOCUMENT AND WEIR WAS THE ONLY ONE WHO WAS FIRED, THAT THIS SUPPORTS THE COMPANY'S POSITION THAT THE EMPLOYEES COULD HAVE REFUSED TO SIGN THE DOCUMENT WITHOUT "RESIGNING" AND WITHOUT PUTTING THEIR JOBS IN JEOPARDY. WHATEVER MENTAL RESERVATIONS, IF ANY, THE COMPANY MAY HAVE HAD ABOUT THE CONSEQUENCES TO BE VISITED ON EMPLOYEES WHO DID NOT SIGN AND WHO DID NOT RESIGN, THE BEST EVIDENCE OF THE COMPANY'S MEANING AND THE ONLY ONE OF PRACTICAL SIGNIFICANCE TO THE EMPLOYEES CONCERNED, WAS SOLOMON'S WORDS AND ACTIONS AT THE TIME OF THE MEETING. MOREOVER, IF THE COMPANY HAD AFTER-THOUGHTS ON OTHER MATTERS (AS INDICATED ABOVE) IT IS NOT IMPROBABLE THAT IT ALSO HAD SECOND THOUGHTS ON THE ADVISABILITY OF ENFORCING ITS CONDITIONS BY FURTHER DISMISSALS.

NO DOUBT, BECAUSE OF THEIR ECONOMIC DEPENDENCE ON THEIR EMPLOYER, MANY EMPLOYEES FACED WITH SUCH A PROPOSAL WOULD UNDERSTANDABLY FEEL CONSTRAINED TO RELINQUISH THEIR RIGHTS UNDER THE ACT QUIETLY RATHER THAN TO JEOPARDIZE THE SECURITY OF THEIR JOBS BY OPEN RESISTANCE. IT MUST BE ANTICIPATED, HOWEVER, THAT THERE WILL BE EMPLOYEES WHO WILL NOT YIELD THEIR RIGHTS IN SILENCE BUT WHO, ON THE CONTRARY, WILL NOISILY AND VEHEMENTLY ATTEMPT TO PROTECT THEM EVEN IF THIS MEANS THE LOSS OF THEIR JOBS. THERE IS NO DOUBT THAT WEIR WAS ENTITLED UNDER THE LABOUR RELATIONS ACT BOTH TO REFUSE TO SIGN THE DOCUMENT AND TO REFUSE TO RESIGN. MOREOVER, IN OUR OPINION, HE WAS CLEARLY ENTITLED TO VOICE HIS OBJECTIONS TO BEING ASKED TO SIGN THE DOCUMENT, AND TO CHALLENGE HIS EMPLOYER'S AUTHORITY TO COMPEL HIM "TO RESIGN". IT IS OBVIOUS THAT THE RESPONDENT IN THIS CASE WAS IMPOSING DISCRIMINATORY CONDITIONS OF EMPLOYMENT OF A MOST SERIOUS AND FLAGRANT NATURE ON HIS EMPLOYEES. IN THIS RESPECT HE WAS SEEKING TO THWART AND TO DENY TO THEM THE BASIC RIGHTS WHICH THEY HAD RECENTLY GAINED IN A CERTIFICATION FROM THE BOARD TO BARGAIN COLLECTIVELY WITH THE COMPANY THROUGH THE COMPLAINANT UNION. IN SUCH CIRCUMSTANCES, IT WOULD REDUCE THE LEGISLATION TO A STATE OF ABSURDITY IF SUCH AN EMPLOYER COULD EXCUSE HIMSELF FROM HIS RESPONSIBILITY FOR SUCH DISCRIMINATORY PRACTICES BY SAYING THAT HE FIRED AN EMPLOYEE NOT BECAUSE OF THAT EMPLOYEE'S REFUSAL TO YIELD TO THE DISCRIMINATORY CONDITIONS BUT BECAUSE HE WAS OFFENDED AND EMBARRASSED BY THE WAY IN WHICH THE EMPLOYEE EXPRESSED HIS RESISTANCE TO THE IMPOSITION OF THE CONDITIONS.

WE ARE SATISFIED THAT ON APRIL 20TH, 1964, WEIR WAS DISCRIMINATELY DISCHARGED FROM HIS EMPLOYMENT BECAUSE HE REFUSED TO GIVE UP HIS RIGHT TO COLLECTIVE BARGAINING UNDER THE LABOUR RELATIONS ACT. THE EVIDENCE GIVEN BY THE AGGRIEVED EMPLOYEE AT THE HEARING HELD ON JUNE 10TH, 1964, WAS THAT FOR A SIX WEEK PERIOD PRIOR TO OBTAINING STEADY EMPLOYMENT WITH LOBLAWS AT A RATE GREATER THAN WHAT HE RECEIVED FROM THE RESPONDENT HE HAD RECEIVED THE WEEKLY SUM OF \$50.00 FROM AN EMPLOYMENT WITH THE UNION. AT THE TIME OF HIS DISCHARGE HE WAS RECEIVING THE SUM OF \$105.00 PER WEEK. ON THE EVIDENCE PRESENTED AT THE HEARING, THEREFORE, WEIR SUSTAINED A LOSS OF WAGES AND EMPLOYMENT BENEFITS AMOUNTING TO THE SUM OF \$330.00.



OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT EMPLOYER IS AS FOLLOWS:-

- (A) THE RESPONDENT SHALL FORTHWITH EMPLOY AND REINSTATE THOMAS WEIR IN THE SAME OR LIKE POSITION IN WHICH HE WAS EMPLOYED ON APRIL 20TH, 1964, WITH THE SAME WAGES AND OTHER EMPLOYMENT BENEFITS WHICH HE WAS THEN RECEIVING ON THAT DATE;
- (B) THE RESPONDENT SHALL FORTHWITH PAY TO THOMAS WEIR THE SUM OF \$330.00 BY WAY OF COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FOR THE PERIOD BETWEEN APRIL 20TH, 1964, AND JUNE 10TH, 1964;
- (C) UPON THE REQUEST OF EITHER PARTY FOR THAT PURPOSE (MADE WITHIN A REASONABLE TIME HEREAFTER), THE BOARD WILL DETERMINE THE AMOUNT OF COMPENSATION, IF ANY, PAYABLE BY THE RESPONDENT TO THOMAS WEIR FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS BETWEEN JUNE 10TH, 1964, AND THE DATE OF HIS ACTUAL REINSTATEMENT IN THE EMPLOY OF THE RESPONDENT IN ACCORDANCE WITH THE TERMS HEREOF."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT.

THE EVIDENCE IN THIS CASE AND THE REASONABLE AND LOGICAL INFERENCES TO BE DRAWN THEREFROM LEAVES NO DOUBT IN MY MIND THAT THE COMPLAINANT WAS DISCHARGED FROM HIS EMPLOYMENT BY REASON OF HIS OWN MISCONDUCT AND NOT BY REASON OF ANY LAWFUL UNION ACTIVITY. THIS CONCLUSION IS SUPPORTED BY THE FACT THAT OTHER EMPLOYEES, INCLUDING THE TWO OTHER MEMBERS OF THE UNION NEGOTIATING COMMITTEE, LIKewise REFUSED TO SIGN THE DOCUMENT IN QUESTION AND SUCH REFUSAL DID NOT RESULT IN ANY DISCIPLINARY ACTION AGAINST THEM.

IN MY OPINION THE LABOUR RELATIONS ACT DOES NOT GUARANTEE UNION MEMBERS WILL ENJOY, BY VIRTUE ONLY OF SUCH MEMBERSHIP, AN ABSOLUTE IMMUNITY FROM DISCHARGE REGARDLESS OF THE MANNER IN WHICH THEY PERSONALLY CONDUCT THEMSELVES. IN THE INSTANT CASE IT IS ABUNDANTLY CLEAR THAT THE COMPLAINANT'S ACTIVITY WAS PURPOSEFULLY CALCULATED TO DEFY THE AUTHORITY OF HIS EMPLOYER AND TO SO EMBARRASS HIM IN THE PRESENCE OF OTHER EMPLOYEES AS TO PROVOKE HIS EMPLOYER INTO DISCHARGING HIM. THE EVIDENCE CONCERNING THE AGGRESSIVE MANNER AND TONE OF VOICE IN WHICH HE HARANGUED HIS EMPLOYER IN THE OPEN MEETING IN THE PRESENCE OF HIS FELLOW EMPLOYEES; HIS REPEATED INSISTANCE AND TAUNTING THAT THE EMPLOYER SAY HE WAS FIRED; THE FACT THAT HE DID NOT SEEK IMMEDIATE EMPLOYMENT WHEN TERMINATED BUT APPARENTLY AS A REWARD FOR THE SUCCESSFUL COMPLETION OF HIS MISSION HE WAS PLACED IN THE EMPLOY OF THE UNION FOR SOME 6 WEEKS; IMPELS ME TO CONCLUDE THE SOLE REASON FOR HIS DISCHARGE WAS HIS UNREASONABLY PROVOCATIVE CONDUCT. ACCORDINGLY I WOULD DISMISS THE COMPLAINT."

8459-64-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT)  
V. CRONIN'S LIMITED (RESPONDENT).



THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

UPON THE REQUEST OF THE COMPLAINANT MADE PURSUANT TO PARAGRAPH 4 (B) OF THE BOARD'S DETERMINATION HEREIN OF SEPTEMBER 25TH, 1964, (SEE O.L.R.B. MONTHLY REPORT SEPTEMBER 1964 P. 275) THIS COMPLAINT CAME ON FOR FURTHER HEARING AT SUDBURY ON NOVEMBER 30TH. THE PURPOSE OF THIS HEARING WAS TO ENABLE THE BOARD TO ASSESS THE AMOUNT OF COMPENSATION PAYABLE, IF ANY, BY THE RESPONDENT TO OMAR AUBREY, LUCETTE DUFOUR, IRENE LANGLOIS, BETTY VAN ELLEN AND HELEN FOUCAULT FOR THEIR LOSS OF EARNING AND OTHER EMPLOYMENT BENEFITS RESULTING FROM THEIR DISCHARGE CONTRARY TO THE LABOUR RELATIONS ACT ON MAY 2ND, 1964.

THE EVIDENCE AT THIS HEARING WAS THAT FOLLOWING THE RELEASE OF THE BOARD'S DETERMINATION, THE PARTIES MET WITH A VIEW TO SETTLING THE QUESTION OF THE AMOUNT OF THE SAID COMPENSATION, IF ANY, PAYABLE BY THE RESPONDENT, BUT THAT THEY DID NOT REACH ANY AGREEMENT ON THE MATTER.

THE EVIDENCE DISCLOSES THAT ON OCTOBER 10TH, 1964, THE AGGRIEVED EMPLOYEES WERE GIVEN NOTICE IN WRITING BY THE RESPONDENT TO REPORT FOR WORK ON OCTOBER 13TH. HOWEVER, THESE EMPLOYEES WERE ADVISED BY A REPRESENTATIVE OF THE COMPLAINANT UNION, MR. KENSIT, NOT TO REPORT FOR WORK AS REQUESTED BY THE RESPONDENT. NONE OF THE AGGRIEVED EMPLOYEES DID REPORT FOR WORK ON OCTOBER 13TH NOR DID THEY REPORT FOR WORK AT ANY TIME THEREAFTER BY THE DATE OF THIS HEARING. COUNSEL FOR THE COMPLAINANT INFORMED THE BOARD AT THE HEARING THAT THE COMPLAINANT'S CLAIM FOR COMPENSATION IN RESPECT TO THE AGGRIEVED PERSONS WAS LIMITED TO THE PERIOD FROM THE DATE OF THEIR DISCHARGE, MAY 2ND, TO THE DATE WHEN THE RESPONDENT TOLD THEM TO REPORT FOR WORK, OCTOBER 13TH.

DURING PART OF THE PERIOD FOR WHICH THE COMPLAINANT SEEKS COMPENSATION FOR THE AGGRIEVED EMPLOYEES, AN ORDER MADE UNDER THE PROVISIONS OF THE MINIMUM WAGE ACT, R.S.O. 1960, c. 240 AND AMENDMENTS THERETO BECAME OPERATIVE, SETTING MINIMUM HOURLY WAGES FOR EMPLOYEES IN THE DISTRICT AND TYPE OF EMPLOYMENT IN WHICH THE AGGRIEVED PERSONS HAD BEEN EMPLOYED BY THE RESPONDENT. THE MATERIAL PARTS OF THIS ORDER PROVIDE,

3. (2) EVERY EMPLOYER SHALL PAY TO EACH MALE EMPLOYEE  
- - - A MINIMUM HOURLY RATE OF WAGES OF NOT  
LESS THAN,
  - (A) 85 CENTS FOR WORK PERFORMED IN THE PERIOD  
FROM THE 29TH DAY OF JUNE, 1964, TO THE  
28TH DAY OF DECEMBER, 1964.
- (3) EVERY EMPLOYER SHALL PAY TO EACH FEMALE EMPLOYEE  
- - - A MINIMUM HOURLY RATE OF WAGES OF NOT LESS  
THAN,
  - (A) 80 CENTS FOR WORK PERFORMED IN THE PERIOD  
FROM THE 29TH DAY OF JUNE, 1964 TO THE 28TH  
DAY OF DECEMBER, 1964.

SECTION 6 OF THE MINIMUM WAGE ACT PROVIDES IN PART AS FOLLOWS:-

EVERY EMPLOYER WHO PERMITS ANY EMPLOYEE TO PERFORM ANY WORK WITH RESPECT TO WHICH A MINIMUM WAGE IS ESTABLISHED SHALL BE DEEMED TO HAVE AGREED TO PAY TO THE EMPLOYEE AT LEAST THE MINIMUM WAGE ESTABLISHED  
- - - . (EMPHASIS ADDED)

IT IS THE CONTENTION OF COUNSEL FOR THE COMPLAINANT UNION THAT THE CALCULATION OF THE AMOUNT OF COMPENSATION PAYABLE TO EACH EMPLOYEE FOR THAT PART OF THE PERIOD IN QUESTION FROM JUNE 29TH, 1964, MUST TAKE INTO ACCOUNT AND BE INCREASED BY THE DIFFERENCE BETWEEN WHAT WOULD BE THE HOURLY RATE PAID TO EACH EMPLOYEE ON THE DATE OF THE PERSON'S DISCHARGE AND THE MINIMUM HOURLY WAGE PRESCRIBED ON JUNE 29TH BY THE ABOVE-QUOTED MINIMUM WAGE ORDER. COUNSEL FOR THE COMPLAINANT ARGUES THAT IN THE ABSENCE OF EVIDENCE TO THE CONTRARY IT MUST BE TAKEN THAT THE EMPLOYEES, IF THEY HAD NOT BEEN DISCRIMINATORILY DISCHARGED CONTRARY TO THE LABOUR RELATIONS ACT, WOULD HAVE CONTINUED TO WORK THE SAME NUMBER OF HOURS PER WEEK AS BEFORE THEIR DISCHARGE AND THAT THE RESPONDENT WOULD HAVE COMPLIED WITH THE LAW BY PAYING THEM THE MINIMUM WAGES SET OUT IN THE MINIMUM WAGE ORDER.

COUNSEL FOR THE RESPONDENT ON THE OTHER HAND ARGUES THAT THE BOARD'S DETERMINATION OF THE AMOUNT OF COMPENSATION PAYABLE IS LIMITED IN PARAGRAPH 4 (A) OF THE BOARD'S ENDORSEMENT OF SEPTEMBER 25TH, 1964, TO THE WAGES AND EMPLOYMENT BENEFITS WHICH THE EMPLOYEES WERE RECEIVING ON THE DATE OF THEIR DISCHARGE ON MAY 2ND, 1964. HE CONTENDS ALSO THAT IT IS NOT THE FUNCTION OF THE BOARD TO ENFORCE THE ORDERS OF THE INDUSTRY AND LABOUR BOARD. IN ANY EVENT, HE MAINTAINS THAT THE BOARD MUST TAKE COGNIZANCE OF THE FACT THAT THE RESPONDENT COULD HAVE COMPLIED WITH THE MINIMUM WAGE ORDER BY DECREASING THE NUMBER OF HOURS OF WORK AND PAYING THE SAME WAGES.

IT IS OBVIOUS THAT THE CALCULATION OF COMPENSATION FOR LOSS OF EARNINGS AND EMPLOYMENT BENEFITS FOR THAT PART OF THE PERIOD IN QUESTION FROM JUNE 29TH TO OCTOBER 13TH, 1964, ON THE BASIS OF THE MINIMUM WAGE SET BY THE MINIMUM WAGE ORDER WOULD NOT BE INCONSISTENT WITH EITHER THE TERMS OR INTENT OF THE BOARD'S ORDER OF SEPTEMBER 25TH. THE PARAGRAPH IN THE BOARD'S ENDORSEMENT RELIED ON BY COUNSEL FOR THE RESPONDENT AS PRECLUDING THIS PLAINLY DEALS NOT WITH THE ASSESSMENT OF COMPENSATION BUT SOLELY WITH THE TERMS OF REINSTATEMENT.

IN OUR VIEW, IT IS CLEARLY OPEN TO THE BOARD UNDER PARAGRAPH 4(B) OF ITS ENDORSEMENT OF SEPTEMBER 25TH, 1964, TO ASSESS COMPENSATION IN ACCORDANCE WITH THE AMOUNT WHICH IT WOULD BE REASONABLE TO ASSUME WOULD HAVE BEEN EARNED BY THE AGGRIEVED EMPLOYEES HAD THEIR EMPLOYMENT WITH THE RESPONDENT CONTINUED DURING THE ENTIRE PERIOD, MAY 2ND TO OCTOBER 13TH, 1964. IN THE ABSENCE OF ANY EVIDENCE WHATEVER FROM WHICH IT COULD BE FOUND THAT THE HOURS OF WORK OF THE AGGRIEVED EMPLOYEES WOULD LIKELY HAVE CHANGED FOLLOWING THE MINIMUM WAGE ORDER, WE ARE CONSTRAINED TO HOLD THAT AFTER JUNE 29TH THE EMPLOYEES WOULD HAVE CONTINUED TO WORK THE SAME NUMBER OF HOURS PER WEEK WHICH THEY WORKED PRIOR TO THEIR DISCHARGE. ACCORDINGLY, WE MUST FIND THAT THE AMOUNT WHICH THESE EMPLOYEES WOULD HAVE EARNED FROM EMPLOYMENT WITH THE RESPONDENT FOR THAT PART OF THE PERIOD IN QUESTION FROM JUNE 29TH WOULD HAVE INCLUDED THE INCREMENTS IN

QUESTION BROUGHT ABOUT ON THAT DATE BY THE MINIMUM WAGE ORDER.

IN THE ABSENCE OF ANY CHANGE IN THE HOURS OF WORK OF THE AGGRIEVED EMPLOYEES THE PRACTICAL EFFECT OF THE MINIMUM WAGE ORDER WOULD HAVE BEEN TO INCREASE THE RATE OF WAGES PROVIDED FOR IN THE CONTRACT OF EMPLOYMENT TO THE EXTENT AS PROVIDED IN THE SAID ACT NAMELY THAT "EVERY EMPLOYER" INCLUDING THE RESPONDENT "SHALL BE DEEMED TO HAVE AGREED TO PAY TO THE EMPLOYEES AT LEAST THE MINIMUM WAGE ESTABLISHED - -". IN CONSEQUENCE, IT IS OUR VIEW THAT IF THE MATTER HAD ARISEN IN AN ACTION FOR DAMAGES FOR WRONGFUL DISMISSAL RATHER THAT AS HERE FOR DISCRIMINATORY DISCHARGE UNDER THE LABOUR RELATIONS ACT, THE INCREASE BROUGHT ABOUT BY THE MINIMUM WAGE ORDER, IN SUCH CIRCUMSTANCES AS EXISTS IN THE PRESENT CASE, WOULD BE TREATED AS A PROPER ELEMENT IN THE COMPUTATION OF DAMAGES AT COMMON LAW (SEE E.G. MAYNE AND MCGREGOR ON DAMAGES 12 ED. AT P. 522 AND BECKHAM V. DRAKE (1849) 2 H.L.C. 579, PP. 607-608). IN ANY EVENT, WE BELIEVE THAT IT IS A PROPER ELEMENT IN THE ASSESSMENT OF COMPENSATION AS THAT IS ENVISAGED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

WE HAVE CAREFULLY CONSIDERED ALL THE EVIDENCE RELATING TO THE RATES OF WAGES AND HOURS OF WORK OF THE AGGRIEVED EMPLOYEES, THE AMOUNTS EARNED BY THEM IN OTHER EMPLOYMENT AND THE EFFORTS WHICH THEY HAVE MADE TO MITIGATE THEIR LOSSES BY SECURING ALTERNATIVE EMPLOYMENT. OUR ASSESSMENT OF THE AMOUNTS OF COMPENSATION TO BE PAID FORTHWITH BY THE RESPONDENT TO THE AGGRIEVED EMPLOYEES FOR THE PERIOD FROM MAY 2ND 1964, TO OCTOBER 13TH, 1964, IS AS FOLLOWS:-

OMAR AUBREY, THE SUM OF 408.36.  
LUCETTE DUFOUR, THE SUM OF \$637.65.  
IRENE LANGLOIS, THE SUM OF \$653.00.  
HELEN FOUCAULT, THE SUM OF \$664.00.

AS NO EVIDENCE WAS ADDUCED BY THE COMPLAINANT WITH RESPECT TO THE LOSS OF EARNINGS OR EMPLOYMENT BENEFITS, IF ANY, SUSTAINED BY THE AGGRIEVED BETTY VAN ELLEN NO ASSESSMENT OF COMPENSATION CAN BE MADE FOR THIS PERSON."

INDEXED ENDORSEMENT - APPLICATION FOR CONSENT TO  
EARLY TERMINATION OF COLLECTIVE AGREEMENT

9704-64-M: LAUNDRY DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. GARDEN CITY LAUNDRY LIMITED (APPLICANT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS PURPORTS TO BE A JOINT APPLICATION UNDER SECTION 39(3) OF THE LABOUR RELATIONS ACT FOR EARLY TERMINATION OF THE COLLECTIVE AGREEMENT MADE ON NOVEMBER 1ST, 1963.

THE APPLICATION WAS MADE ON BEHALF OF GARDEN CITY LAUNDRY LIMITED (HEREINAFTER REFERRED TO AS THE COMPANY) BY THE PRESIDENT, E.D. ALLEN AND BY NEATTA COOPER, RUBY HOEKSTRA AND GEORGE WOODHOUSE ON BEHALF OF LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (HEREINAFTER REFERRED TO AS THE UNION). THE THREE NAMED PERSONS SIGNED THE APPLICATION AS "STEWARDS, GARDEN CITY LAUNDRY LIMITED, LOCAL 351, LAUNDRY, DRY CLEANING AND DYEHOUSE WORKERS' INTERNATIONAL UNION"

ACCOMPANYING THE APPLICATION WAS A DOCUMENT SIGNED BY TWENTY-SEVEN PERSONS, PURPORTING TO BE ALL THE MEMBERS IN GOOD STANDING OF THE UNION EMPLOYED BY THE COMPANY, REQUESTING THE TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE COMPANY.

BY LETTER DATED NOVEMBER 25TH, 1964, WALTER HISSON AND LESTER WRIGHTMAN, THE PRESIDENT AND SECRETARY-TREASURER RESPECTIVELY OF THE UNION, THROUGH THEIR COUNSEL, ALLEGED THAT COOPER, HOEKSTRA AND WOODHOUSE HAD NO AUTHORITY TO MAKE THIS APPLICATION ON BEHALF OF THE UNION.

A COLLECTIVE AGREEMENT WAS EXECUTED BY THE UNION AND THE COMPANY ON AUGUST 21ST, 1962. THE AGREEMENT WAS SIGNED ON BEHALF OF THE UNION BY TOM CORRIGAN, AN INTERNATIONAL REPRESENTATIVE OF THE UNION. AND BY COOPER, WOODHOUSE AND RUBY RICHARDS (WHO WAS IDENTIFIED AS BEING ONE AND THE SAME PERSON AS RUBY HOEKSTRA). E.D. ALLEN SIGNED THE COLLECTIVE AGREEMENT ON BEHALF OF THE COMPANY. THIS AGREEMENT WAS RENEWED WITH AMENDMENTS BY A COLLECTIVE AGREEMENT ENTERED INTO ON NOVEMBER 1ST, 1963. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT UNTIL NOVEMBER 10TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE LATTER COLLECTIVE AGREEMENT WAS EXECUTED ON BEHALF OF THE UNION BY GIL R. DAVIS, AN INTERNATIONAL REPRESENTATIVE OF THE UNION, AND BY COOPER, HOEKSTRA AND WOODHOUSE. E.D. ALLEN AGAIN SIGNED ON BEHALF OF THE COMPANY.

WE MAKE THE FOLLOWING FINDINGS OF FACT BASED ON THE EVIDENCE ADDUCED AT THE HEARING OF THE BOARD ON DECEMBER 21ST, 1964. THE UNION IS A COMPOSITE LOCAL AND IS THE BARGAINING AGENT FOR SOME FIFTEEN HUNDRED PRODUCTION EMPLOYEES. APPROXIMATELY THIRTY OF THESE EMPLOYEES ARE EMPLOYED BY THE COMPANY. WALTER HISSON WAS ELECTED PRESIDENT OF THE UNION IN 1960 AND HAS REMAINED IN THAT OFFICE TO THE PRESENT TIME. PRIOR TO THE MAKING OF THE 1962 COLLECTIVE AGREEMENT THE UNION HAD GIVEN AUTHORITY TO ITS INTERNATIONAL REPRESENTATIVES TO NEGOTIATE AND EXECUTE COLLECTIVE AGREEMENTS ON ITS BEHALF. COOPER, HOEKSTRA AND WOODHOUSE WERE STEWARDS FOR THE BARGAINING UNIT EMPLOYEES OF THE COMPANY PRIOR TO AND SINCE THE MAKING OF THE 1962 COLLECTIVE AGREEMENT. ALL THREE WERE MEMBERS OF THE UNION NEGOTIATING COMMITTEE IN THE NEGOTIATION OF BOTH THE 1962 AND 1963 COLLECTIVE AGREEMENTS. THEY SIGNED THE TWO AGREEMENTS (TOGETHER WITH AN INTERNATIONAL REPRESENTATIVE OF THE UNION) IN THEIR CAPACITY AS MEMBERS OF THE NEGOTIATING COMMITTEE. COOPER, HOEKSTRA AND WOODHOUSE HOLD NO OFFICES IN THE UNION. THEY NEITHER REQUESTED NOR WERE THEY GRANTED, AT ANY TIME, BY ANY OFFICER OF THE UNION, AUTHORITY TO MAKE THEIR APPLICATION ON BEHALF OF THE UNION.

TO COMPLY WITH THE PROVISIONS OF SECTION 39(3) OF THE LABOUR RELATIONS ACT BOTH PARTIES TO A COLLECTIVE AGREEMENT MUST MAKE A JOINT APPLICATION TO THE BOARD FOR CONSENT TO TERMINATE THE AGREEMENT. ON THE EVIDENCE BEFORE US, WE FIND THAT COOPER, HOEKSTRA AND WOODHOUSE DID NOT HAVE THE AUTHORITY TO MAKE THIS APPLICATION IN THE NAME OF THE UNION. WE MAKE THIS FINDING DESPITE THE FACT THAT THERE IS EVIDENCE INDICATING THAT THE APPLICATION EXPRESSES THE DESIRES OF ALL THE EMPLOYEES IN THE BARGAINING UNIT. WE WOULD POINT OUT THAT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT A TRADE UNION HAS A QUASI-CORPORATE PERSONALITY SEPARATE AND APART FOR THE EMPLOYEES IT REPRESENTS. THE ACT GIVES AND IMPOSES



CERTAIN RIGHTS AND OBLIGATIONS ON THOSE AFFECTED BY THE LEGISLATION, NAMELY TRADE UNIONS, EMPLOYERS AND EMPLOYEES. THE RIGHT TO MAKE A JOINT APPLICATION UNDER SECTION 39(3) FOR EARLY TERMINATION OF A COLLECTIVE AGREEMENT IS A RIGHT RESTRICTED TO THE PARTIES TO THE AGREEMENT, THAT IS, THE TRADE UNION AND THE EMPLOYER. SUCH A RIGHT DOES NOT EXTEND TO THE EMPLOYEES COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT. IF THE BOARD WERE TO GRANT THE REQUEST MADE BY THE EMPLOYEES WHO FILED THIS APPLICATION IT WOULD HAVE THE EFFECT OF ALLOWING THEM TO SECURE A RELIEF WHICH IS NOT AVAILABLE TO THEM UNDER ANY PROVISION OF THE LABOUR RELATIONS ACT.

SINCE NO AUTHORITY WAS VESTED IN THE PERSONS WHO MADE THE APPLICATION IN THE NAME OF THE UNION, THIS APPLICATION IS DISMISSED."

WRITTEN REASONS

9488-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (MILLWRIGHT SECTION) (APPLICANT) v. DUPONT OF CANADA, LIMITED KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (19 EMPLOYEES).

- AND -

9489-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 249 (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (CARPENTERS, WORKS ENGINEERING AND MINOR CONSTRUCTION DEPARTMENTS, KINGSTON WORKS). (4 EMPLOYEES).

- AND -

9490-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 115 (APPLICANT) v. DU PONT OF CANADA LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (58 EMPLOYEES).

- AND -

9491-64-R: INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS (APPLICANT) v. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRE DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (9 EMPLOYEES)

- AND -

9492-64-R: LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. DU PONT OF CANADA LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) v. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (INTERVENER). (41 EMPLOYEES).

- AND -

9493-64-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL

UNION 114 (APPLICANT) V. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (9 EMPLOYEES).

- AND -

9494-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. DUPONT OF CANADA, LIMITED, KINGSTON WORKS, TEXTILE FIBRES DEPARTMENT (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER). (141 EMPLOYEES).

ON DECEMBER 18TH, THE BOARD RELEASED ITS DECISION DISMISSING THIS APPLICATION FOR REASONS TO BE GIVEN IN WRITING. THE BOARD'S REASONS FOR ITS DECISION NOW FOLLOW.

THIS CASE, TOGETHER WITH SIX OTHER APPLICATIONS FOR CERTIFICATION BY OTHER APPLICANTS CLAIMING TO REPRESENT THEIR RESPECTIVE CRAFTS AMONG EMPLOYEES OF THIS RESPONDENT WHO ARE INCLUDED IN THE SAME EXISTING INDUSTRIAL UNIT, REFERRED TO HEREAFTER, WERE, ON THE AGREEMENT OF COUNSEL, HEARD TOGETHER. IT WAS AGREED BY COUNSEL THAT THE EVIDENCE AND ARGUMENT ADVANCED ON THE ONE ISSUE MENTIONED IN PARAGRAPH 5 HEREOF AND COMMON TO ALL OF THESE CASES WOULD BE APPLIED MUTATIS MUTANDIS TO EACH CASE.

THE EMPLOYEES AFFECTED BY THIS APPLICATION HAVE BEEN AN INTEGRAL PART OF AN INDUSTRIAL UNIT OF EMPLOYEES REPRESENTED BY THE INTERVENER UNION, DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160, AND BOUND BY SUCCESSIVE COLLECTIVE AGREEMENTS BETWEEN THE INTERVENER AND THE RESPONDENT EMPLOYER SINCE 1947...

THE HEARING HELD IN THIS CASE WAS LIMITED TO HEARING EVIDENCE AND ARGUMENT ON THE SINGLE PRELIMINARY ISSUE AS TO WHETHER, APART FROM ANY CONSIDERATION OF HOW THE BOARD SHOULD EXERCISE ITS DISCRETION IN THE MATTER, THE APPLICANT IS ENTITLED TO INVOKE THE MANDATORY PROVISIONS OF THE FIRST PART OF SECTION 6 (2), NAMELY,

- (1) WHETHER THE EMPLOYEES WHOM THE APPLICANT CLAIMS TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES;
- (2) WHETHER THESE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT;
- (3) WHETHER THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT.

IT WAS UNDERSTOOD THAT IF THE BOARD'S DECISION ON THIS PRELIMINARY ISSUE WERE FAVOURABLE TO THE APPLICANT, ANOTHER HEARING WOULD BE HELD TO AFFORD ALL PARTIES AN OPPORTUNITY TO PRESENT EVIDENCE ON THE SECOND ISSUE NAMELY, WHETHER, IN ALL THE CIRCUMSTANCES, THE BOARD OUGHT, AS A MATTER OF ITS DISCRETIONARY AUTHORITY UNDER SECTION 6 (2), APPLY THE MANDATORY PROVISIONS OF THE SECTION TO FIND THE UNIT CLAIMED APPROPRIATE.

THE EVIDENCE, BOTH DOCUMENTARY AND AS SUPPLEMENTED BY THE VIVE VOCE TESTIMONY INDICATES THAT THE FIRST OBVIOUS PROBLEM IN THE DETERMINATION OF THE ISSUE NOW BEFORE US IS WHETHER THE EMPLOYEES IN QUESTION COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT. THE DOCUMENTARY EVIDENCE FILED AND RELATING TO THE ISSUE IN QUESTION CONSISTS OF THE FOLLOWING:-

- (A) A LIST, EXHIBIT 1, WHICH PURPORTS TO INDICATE INSTANCES WHERE SOME OF THE UNIONS INVOLVED IN THE INSTANT HEARINGS AND OTHER UNIONS ARE PARTIES TO COLLECTIVE AGREEMENTS COVERING EMPLOYEES OF TRADE CLASSIFICATIONS EMPLOYED IN MAINTENANCE WORK. WITH THE EXCEPTION OF A FEW IN CERTAIN MISCELLANEOUS INDUSTRIES SUCH AS CHEMCELL (1963) LTD., IN ALBERTA; ATOMIC ENERGY OF CANADA, DEEP RIVER, ONTARIO; TORONTO STAR, TORONTO; MOIRS LIMITED AND MOIRS SALES LTD., HALIFAX; VANCOUVER HOTEL, VANCOUVER; ETC., THE EMPLOYERS LISTED ARE ALL IN THE PULP AND PAPER INDUSTRY, THE MARINE INDUSTRY AND THE MINING AND SMELTING INDUSTRY;
- (B) A LIST, EXHIBIT 7, WHICH PURPORTS TO ENUMERATE INSTANCES WHERE THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND OTHER UNIONS HAVE BARGAINED FOR A CRAFT SECTION OF WHAT IS STATED IN THE EXHIBIT TO BE THE "ENTIRE UNIT". THIS LIST INCLUDES SUCH COMPANIES AS CHRISTIE BROWN AND COMPANY, TORONTO; THE TORONTO DAILY STAR; THE ALUMINUM COMPANY OF CANADA LTD., KINGSTON; THE ONTARIO HYDRO POWER COMMISSION; ONTARIO, AND MINNESOTA PAPER CO., KENORA; NORTHERN ENGINEERING AND SUPPLY COMPANY, FORT WILLIAM;
- (C) FIVE COLLECTIVE AGREEMENTS BEING, EXHIBIT 2, AN AGREEMENT BETWEEN THE ATOMIC ENERGY OF CANADA LIMITED AND SEVERAL UNIONS, INCLUDING SOME INVOLVED IN THE PRESENT CASES, THROUGH THE ATOMIC ENERGY ALLIED COUNCIL; EXHIBIT 3, AN AGREEMENT BETWEEN THE ONTARIO PAPER CO. LIMITED AND NINE OTHER UNIONS, INCLUDING UNIONS INVOLVED IN THESE CASES; EXHIBIT 4, AN AGREEMENT BETWEEN THE BATHURST POWER AND PAPER CO. LTD. AND SIX UNIONS AND ALSO INCLUDING UNIONS INVOLVED IN THESE CASES; EXHIBIT 5, AN AGREEMENT BETWEEN CATALYTIC CONSTRUCTION OF CANADA, LIMITED AND FOURTEEN UNIONS, INCLUDING SOME OF THOSE INVOLVED IN THESE CASES, AND THE ONTARIO PLANT MAINTENANCE COUNCIL ACTING AS THE AGENT FOR THESE UNIONS; EXHIBIT 6, AN AGREEMENT BETWEEN THE SHELL OIL COMPANY, WOOD RIVER, ILLINOIS REFINERY AND ELEVEN UNIONS, INCLUDING UNIONS INVOLVED IN THESE CASES.

THE APPLICANT UNION CLAIMS TO REPRESENT THE EMPLOYEES IN QUESTION BECAUSE OF THEIR TRADE CLASSIFICATIONS AND RELIES ON THE FOREGOING EXHIBITS TO SUBSTANTIATE ITS CLAIM THAT THESE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION, THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THEIR SKILLS AND TRADE. A PERUSAL OF THE COLLECTIVE AGREEMENTS FILED, HOWEVER, SHOWS THAT IN EACH CASE BARGAINING IN FACT TOOK PLACE ON A JOINT BASIS FOR EMPLOYEES IN A COMPOSITE RATHER THAN A SEPARATE BARGAINING UNIT. ALSO, ON THE EVIDENCE, WE LED TO CONCLUDE THAT THE SAME SITUATION PREVAILED WITH RESPECT TO AT LEAST MOST OF THE COLLECTIVE AGREEMENTS ENUMERATED IN THE TWO LISTS, EXHIBITS 1 AND 7.



WHILE, IN THE EXPERIENCE OF THIS BOARD, OF WHICH, OF COURSE, WE ARE CONSTRAINED TO TAKE COGNIZANCE, A HISTORY OF BARGAINING ON CRAFT LINES IN MANY ESTABLISHMENTS IN THE PAPER-MAKING AND SHIPBUILDING INDUSTRIES HAS IN PREVIOUS CASES BEEN DEMONSTRATED (SEE E.G. THE FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1963, P. 491), THE BOARD'S EXPERIENCE IN PAST CASES HAS INDICATED THAT, IT IS ONLY IN A FEW VERY RARE EXCEPTIONS THAT ANY BARGAINING ON THIS BASIS HAS EVER OCCURRED WITH RESPECT TO CLASSIFICATIONS OF TRADE OR SKILLED PERSONNEL EMPLOYED IN ANY MAINTENANCE DEPARTMENTS OF COMMERCIAL, INDUSTRIAL OR MANUFACTURING FIRMS. UNIONS THAT HAVE MADE SUCH UNSUCCESSFUL APPLICATIONS FOR CERTIFICATION FOR TRADES EMPLOYED IN MAINTENANCE DEPARTMENTS, HAVE IN THE PAST FAILED TO SHOW THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE THEY COMMONLY BARGAIN FOR SUCH PERSONS SEPARATELY AND APART FROM OTHER EMPLOYEES.

THE EVIDENCE BEFORE US INDICATES INSTANCES WHERE BARGAINING HAS OCCURRED BY UNIONS ON A JOINT BASIS FOR MAINTENANCE EMPLOYEES IN COMPOSITE UNITS AND A NUMBER OF INSTANCES WHERE, ALTHOUGH ON THE MATERIAL BEFORE US THE MATTER IS LEFT EXTREMELY VAGUE, IF NOT UNCERTAIN, BARGAINING, HOWEVER IT CAME ABOUT, HAS OCCURRED BETWEEN SOME EMPLOYERS AND SOME INDIVIDUAL UNIONS FOR MAINTENANCE EMPLOYEES OF PARTICULAR TRADE CLASSIFICATIONS.

IN OUR OPINION, THE EVIDENCE ADDUCED ON BEHALF OF THE APPLICANT FALLS FAR SHORT OF PROVING THAT EMPLOYEES IN MAINTENANCE DEPARTMENTS OF MANUFACTURING FIRMS SUCH AS THE RESPONDENT OR IN MANUFACTURING COMMERCIAL OR INDUSTRIAL FIRMS IN GENERAL, COMMONLY (AS DISTINGUISHED FROM WHAT IS MORE PROBABLY A FEW SCATTERED AND ISOLATED INSTANCES OF BARGAINING IN MAINTENANCE DIVISIONS OF SOME PARTICULAR EMPLOYERS IN CERTAIN INDUSTRIES) BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES.

COUNSEL FOR THE APPLICANT RELIES ON THE TELFER PAPER BOX CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1963, P. 452, TO SUPPORT HIS ARGUMENT THAT IT IS NOT A CONDITION PRECEDENT IN ORDER TO PROVE, WITHIN THE MEANING OF SECTION 6 (2), THAT THE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES, TO ESTABLISH A HISTORY OF COLLECTIVE BARGAINING IN THE PARTICULAR INDUSTRY OR FIRM CONCERNED. HE CONTENDS THAT IN THE ABSENCE OF CLEAR LANGUAGE TO THAT EFFECT IT CANNOT BE TAKEN TO HAVE BEEN THE INTENTION OF THE LEGISLATURE, IN DEROGATION OF ITS RECOGNITION OF CRAFT RIGHTS, TO RESTRICT AND CIRCUMSCRIBE THE OPERATION OF SECTION 6 (2) TO THOSE PARTICULAR INDUSTRIES OR AREAS IN WHICH CRAFT BARGAINING HAD BEEN ESTABLISHED AT THE TIME OF THE ENACTMENT OF THE SECTION.

WHILE THE BOARD IN THE TELFER PAPER BOX CASE STATED THAT PREVIOUS BARGAINING HISTORY BY AN APPLICANT'S CRAFT IN THE PARTICULAR INDUSTRY THERE CONCERNED WAS ONLY ONE FACTOR AMONG OTHERS TO BE CONSIDERED IN DETERMINING THE APPLICATION OF SECTION 6 (2), THE BOARD IN THAT CASE DID NOT SAY THAT IN THE ABSENCE OF SUCH A FACTOR IT WOULD DISPENSE WITH THE REQUIREMENT OF PROOF OF AT LEAST A BARGAINING HISTORY IN THE PARTICULAR INDUSTRY BY A CRAFT UNION CLOSELY AKIN TO THE APPLICANT OR OF SOME HISTORY OF BARGAINING BY THE APPLICANT OR CRAFT UNION AKIN TO IT IN ALLIED OR SIMILAR INDUSTRIES. INDEED, THE BOARD IN THE TELFER PAPER BOX CASE FOUND, AND FROM THE RECORD THIS APPEARS TO HAVE BEEN IMPORTANT TO THE DECISION IN THAT CASE, THAT THE PAPER BOX INDUSTRY HAD NOT ALWAYS BEEN ORGANIZED ON AN INDUSTRIAL BASIS BUT THAT A UNION PERTAINING TO A CRAFT CLOSELY AKIN TO THE APPLICANT IN THAT CASE HAD PREVIOUSLY BEEN PERMITTED BY THE BOARD TO CARVE OUT A CRAFT UNIT FROM AN INDUSTRIAL UNIT IN A PAPER BOX FACTORY. IN OUR OPINION, WHILE THE PRINCIPLE ENUNCIATED IN THE TELFER PAPER BOX CASE WHICH WAS OBVIOUSLY DECIDED ON A STATE OF FACTS QUITE DISTINGUISHABLE FROM THOSE IN THE INSTANT CASE



MAY TO SOME EXTENT ASSIST THE APPLICANT, IT PLAINLY DOES NOT CONSTITUTE ANY PRECEDENT FOR THE APPLICATION OF SECTION 6 (2) TO THE FACTS OF THIS CASE.

AS HAS OFTEN BEEN THE CASE IN APPLICATIONS OF THIS NATURE, COUNSEL HAS RELIED HEAVILY IN HIS ARGUMENT ON THE TRADE CLASSIFICATIONS AND WORK DONE BY THE EMPLOYEES IN QUESTION, TOGETHER WITH THE FACT, AS HE ARGUES, THAT THEY HAVE CLEARLY INDICATED THEIR DEMOCRATIC WISHES, BY SIGNING CARDS, TO BE SEPARATELY REPRESENTED BY THE APPLICANT AS THEIR COLLECTIVE BARGAINING AGENT. AS HAS BEEN POINTED OUT BY THE BOARD IN PREVIOUS CASES, (SEE E.G. THE CANADIAN FOUNDRIES & FORGINGS LIMITED CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,203, C.L.S. 76-753, AND THE COOPER & BEATTY LIMITED CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,100, C.L.S. 76-581), THESE ARE NOT THE ONLY CONSIDERATIONS FOR THE APPLICATION OF THE FIRST PART OF SECTION 6 (2); IF THEY WERE, EVERY INDUSTRIAL OR COMMERCIAL UNDERTAKING AND PART THEREOF IN WHICH TRADESMEN WERE EMPLOYED WOULD, CONTRARY TO THE INTENT AND PURPOSE OF THE SECTION, BE VULNERABLE TO INDISCRIMINATE FRAGMENTIZATION INTO SEPARATE BARGAINING UNITS.

THE PRINCIPLES AND REQUIREMENTS OF PROOF OF A BARGAINING HISTORY ENUNCIATED AND APPLIED FROM TIME TO TIME BY THIS BOARD IN DEALING WITH CASES AFFECTED BY THE SECTION ARE TO BE FOUND IN THE FOLLOWING, AMONG OTHER CASES, THE COOPER & BEATTY LIMITED CASE, IBID; THE FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED CASE, IBID; THE TELFER PAPER BOX CASE, IBID; ART WIRE & IRON COMPANY CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54, ¶17,080, C.L.S. 76-437; BROCKVILLE GENERAL HOSPITAL, (1957) C.C.H. IBID, ¶16,061, C.L.S. 76-543; ST. MARY'S GENERAL HOSPITAL (KITCHENER), C.L.R.B. MONTHLY REPORT, FEBRUARY, 1963, P. 496; HEAT TILE & MARBLE CO. CASE, (1961) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,204, C.L.S. 76-756; CANADIAN FOUNDRIES & FORGINGS LIMITED CASE, IBID, ETC.). ON THE BASIS OF THE PRINCIPLES WHICH THIS BOARD HAS APPLIED IN THE PAST IN CASES OF THIS NATURE, WE ARE COMPELLED TO FIND ON THE EVIDENCE PLACED BEFORE US THAT THE APPLICANT HAS FAILED TO BRING ITSELF WITHIN THE PROVISIONS OF THE FIRST PART OF SECTION 6 (2) OF THE ACT.

IT WAS FOR THE FOREGOING REASONS THAT THIS APPLICATION WAS DISMISSED.

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

I DISSENT. IN CASES WHERE NO QUESTION OF CRAFT RIGHTS IS INVOLVED, THE BOARD IN DETERMINING WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT, HAS TAKEN INTO ACCOUNT UNION ORGANIZATIONAL HISTORY, COMPANY ORGANIZATIONAL STRUCTURE, COMMUNITY OF INTERESTS, FUNCTIONAL INTERDEPENDENCE AND LACK OF INTERCHANGEABILITY OF EMPLOYEES. IN THIS CASE, ALTOGETHER APART FROM THE PROVISIONS OF SECTION 6 (2), THE BOARD MIGHT WELL HAVE REGARD TO THE FACT THAT THE MAINTENANCE EMPLOYEES HERE ARE CLEARLY DISTINGUISHABLE IN THEIR SKILLS AND UNION ORGANIZATION FROM OTHER EMPLOYEES AND THAT IN SO FAR AS COMPANY ORGANIZATION IS CONCERNED, THERE IS A SEPARATE MAINTENANCE DEPARTMENT WITH ITS OWN LINE OF MANAGEMENT. THERE IS NO EVIDENCE THAT THESE EMPLOYEES ARE INTERCHANGEABLE WITH OTHER EMPLOYEES OR THAT THERE IS ANY COMMUNITY OF INTEREST BETWEEN THEM AND THE EMPLOYEES IN THE PRODUCTION UNIT.

IN VIEW OF THE POLICY FREQUENTLY RE-STATED IN RECENT TIMES BY PUBLIC OFFICIALS THAT THE UP-GRADING OF SKILLS, RETRAINING AND THE ACQUISITION OF NEW SKILLS SHOULD BE ENCOURAGED, IT IS TO MY MIND BEYOND QUESTION THAT THE RECOGNITION OF SEPARATE SKILL CRAFT ORGANIZATION, WITH ITS INCENTIVE OF PRIDE, FURTHERS SUCH A POLICY.

ALTHOUGH THE MAJORITY ARE CONCERNED ABOUT MAKING INDUSTRY "VULNERABLE TO INDU-

CRIMINATE FRAGMENTIZATION INTO SEPARATE BARGAINING UNITS", I CAN FIND NOTHING IN THE LEGISLATION TO SUPPORT THE VIEW THAT THIS IS A PROPER CONSIDERATION FOR THE BOARD TO TAKE INTO ACCOUNT IN DEALING WITH CRAFT UNITS. IN ADDITION, THE SPECIAL RIGHTS THAT CRAFT GROUPS HAVE BEEN GIVEN UNDER SECTION 6 (2) OUGHT NOT TO BE SACRIFICED BECAUSE THEY MIGHT SUBJECT AN EMPLOYER TO ADDITIONAL BARGAINING RESPONSIBILITY. ALTHOUGH THE MAJORITY EXPRESS A FEAR OF WHAT WOULD HAPPEN IF BARGAINING UNITS WERE FRAGMENTIZED, THAT FEAR HAS NOT PRECLUDED THE BOARD FROM ESTABLISHING SEPARATE UNITS OF EMPLOYEES SUCH AS OFFICE AND PLANT CLERICALS, LABORATORY AND TECHNICAL EMPLOYEES, RESEARCH EMPLOYEES, PARTS DEPARTMENT EMPLOYEES AND OTHER OPERATING UNITS BASED ON COMPANY ORGANIZATION.

IN THIS CASE I FIND THAT THERE IS SUFFICIENT EVIDENCE OF BARGAINING HISTORY TO SUPPORT THE CLAIM OF THE APPLICANT FOR A CRAFT UNIT UNDER SECTION 6 (2) OF THE ACT AND I WOULD HAVE SO FOUND.

STATISTICAL TABLES FOR JANUARY 1965

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JANUARY 1965	1ST 10 MONTHS OF 1964-65	FISCAL YEAR. 1963-64
I. CERTIFICATION	73	779	596
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	74	69
III. DECLARATION OF SUCCESSOR STATUS	1	4	24
IV. CONCILIATION SERVICES	-*	603	935
V. DECLARATION THAT STRIKE UNLAWFUL	-	35	29
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	5
VII. CONSENT TO PROSECUTE	-	64	120
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	3	133	124
X. MISCELLANEOUS	3	23	17
TOTAL	87	1720	1919

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JANUARY 1965	1ST 10 MONTHS OF 1964-65	FISCAL YEAR. 1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	76	955	845

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JANUARY 1ST 1965	10 MONTHS OF 1964-65	FISCAL YEAR. 1963-64
I. CERTIFICATION	61	767	640
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	77	88
III. DECLARATION OF SUCCESSOR STATUS	-	6	28
IV. CONCILIATION SERVICES	-	689	947
V. DECLARATION THAT STRIKE UNLAWFUL	-	35	29
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	4
VII. CONSENT TO PROSECUTE	4	64	131
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	12	151	132
IX. MISCELLANEOUS	4	25	13
TOTAL	87	1819	2012



TABLE IV  
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JANUARY 1ST 1965	10 MTHS 1964-65	FISCAL YR. 1963-64	JANUARY 1ST 1965	10 MTHS 1964-65	FISCAL YR. 1963-64
I. <u>CERTIFICATION</u>						
GRANTED	43	565	460	859	16692	13289
DISMISSED	13	133	112	520	6226	3527
WITHDRAWN	5	69	68	37	2422	1004
TOTAL	<u>61</u>	<u>767</u>	<u>640</u>	<u>1416</u>	<u>25340</u>	<u>17820</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	1	47	61	14	590	1505
DISMISSED	5	28	23	689	1140	514
WITHDRAWN	-	2	4	-	82	97
TOTAL	<u>6</u>	<u>77</u>	<u>88</u>	<u>703</u>	<u>1812</u>	<u>2116</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		JANUARY 1965	1ST 10 MONTHS FISCAL YEAR. 1964-65	1963-64
III.	<u>CONCILIATION SERVICES*</u>			
	REFERRED	-	632	876
	DISMISSED	-	27	20
	WITHDRAWN	-	30	51
	TOTAL	-	689	947
IV.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	-	13	6
	DISMISSED	-	5	3
	WITHDRAWN	-	17	20
	TOTAL	-	35	29
V.	<u>DECLARATION THAT LOCKOUT UNLAWFUL</u>			
	GRANTED	-	1	-
	DISMISSED	-	1	1
	WITHDRAWN	-	3	3
	TOTAL	-	5	4
VI.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	2	13	42
	DISMISSED	1	14	10
	WITHDRAWN	1	37	79
	TOTAL	4	64	131

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1965	1ST 10 MONTHS FISCAL YEAR. 1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	17	20
POST-HEARING VOTE	2	29	52
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	8	10
POST-HEARING VOTE	5	48	45
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>7</u>	<u>102</u>	<u>129</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1965	1ST 10 MONTHS OF FISCAL YEAR. 1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	-	12	27
TOTAL	<u>-</u>	<u>12</u>	<u>32</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
DURING FEBRUARY 1965

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

No VOTE CONDUCTED

9658-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. POLISH ALLIANCE FRIENDLY SOCIETY OF CANADA BRANCH 10. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF."  
(3 EMPLOYEES IN THE UNIT).

9715-64-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) v. THE QUAKER OATS COMPANY OF CANADA LIMITED, PET FOODS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(70 EMPLOYEES IN THE UNIT).

(ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FOUND THAT THE EMPLOYEES IN THE LABORATORY STAFF WERE INCLUDED IN THE BARGAINING UNIT EXCEPT THE SUPERVISOR.)

9743-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE COUNTY OF PEEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PEEL COUNTY MANOR AT BRAMPTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, HEAD HOUSEKEEPER, NURSING SUPERVISORS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, WE DECLARE THAT MRS. MARY HALL, A PERSON CLASSIFIED BY THE RESPONDENT AS THE HEAD COOK, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER D. M. STOREY DISSENTED AND SAID:-

"I DISSENT.

I FIND THAT MRS. MARY HALL DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY I WOULD HAVE INCLUDED HER IN THE BARGAINING UNIT."

9871-64-R: OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL 290 AFL-CIO (APPLICANT) v. OAKVILLE AUTO EMPLOYEES' CREDIT UNION LTD. (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT ASSISTANT



OFFICE MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER."  
(3 EMPLOYEES IN THE UNIT).

9872-64-R: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN GALT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9879-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. ROYAL CANADIAN LEGION #317 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

9890-64-R: GENERAL TRUCK DRIVERS LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SIMMONDS TRANSPORT, DIVISION OF DOMINION FREIGHTWAYS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

9895-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ANIMAL TRAP COMPANY OF AMERICA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

9898-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OTTAWA DEPOT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

9899-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. HOGAN PONTIAC BUICK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9900-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. D. BAKER ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9902-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. ACE PROPERTIES LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9903-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ST. LAWRENCE RENDERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

9906-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SEIBERLING RUBBER CO. OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SEIBERLING SERVICE CENTER AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE POSITION TAKEN BY THE APPLICANT).

9910-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 247 (APPLICANT) V. T. A. ANDRE AND SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

9911-64-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. HOLLEY ELECTRIC LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET;

ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(11 EMPLOYEES IN THE UNIT).

9913-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1071 (APPLICANT) V. LIGHTFOOT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9916-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT STURGEON FALLS, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9923-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WHITING EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

9930-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF ITS BRANCH AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ICE CREAM TERRITORY SALESMEN, SALES MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

9932-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. SQUARE "C" TEXTILES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT SHIFT FOREMEN, PERSONS ABOVE THE RANK OF SHIFT FOREMAN, CHIEF STATIONARY ENGINEER, HEAD FIXERS, LABORATORY, OFFICE AND SALES STAFF." (58 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TWO NAMED PERSONS CLASSIFIED BY THE RESPONDENT AS MANAGEMENT TRAINEES, ARE NOT INCLUDED IN THE BARGAINING UNIT.

9933-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).



UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS PLANT AT 720 CALEDONIA ROAD, TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9939-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF INGERSOLL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BOARD OF WORKS DEPARTMENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

9940-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC (APPLICANT) V. HOTEL BELMONT (BRANTFORD) LTD. (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE ROOM WAITERS, LOUNGE WAITERS, BARBOYS AND IMPROVERS EMPLOYED BY THE RESPONDENT AT ITS BELMONT HOTEL AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

9941-64-R: CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION 990, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INTERNATIONAL Co-OPERATIVE STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

9942-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. BATHURST CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT AT 1000 GERRARD STREET EAST, TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 579 )

9946-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1758, BROCKVILLE (APPLICANT) V. ST. LAWRENCE MECHANICAL, CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE APPLICANT IN THIS CASE PROPOSES THE FOLLOWING AREA:  
THE TOWNSHIPS OF ELIZABETHTOWN, REAR OF YONGE AND ESCOTT, FRONT OF ESCOTT, FRONT OF YONGE, IN THE COUNTY OF LEEDS; AND TOWNSHIPS OF MOUNTAIN AND MATILDA IN THE COUNTY OF DUNDAS AND THE COUNTY OF GRENVILLE. THIS AREA HAS NOT HITHERTO BEEN RECOGNIZED BY THE BOARD AS AN APPROPRIATE AREA. NO EVIDENCE WAS SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS SUBMISSION. THE PROPOSED AREA EXCEEDS



THE JURISDICTIONAL AREA OF THE APPLICANT AS FILED WITH THE BOARD BY THE PARENT UNION. WHILE THERE ARE COLLECTIVE AGREEMENTS ON FILE WITH THE BOARD INDICATING THE APPLICANT HAS BARGAINED FOR SUCH AN AREA, MANY OTHER AGREEMENTS ON FILE TO WHICH OTHER UNIONS ARE PARTIES INDICATE A COMPLETE LACK OF UNIFORMITY ON AREA COVERAGE IN THIS PARTICULAR LOCALITY. THE SAME IS TRUE AS REGARDS THE GEOGRAPHIC JURISDICTION OF THESE OTHER UNIONS.

THE AREA COMPRISING THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC, LEEDS, GRENVILLE, DUNDAS, STORMONT AND GLENGARRY (OF WHICH THE PROPOSED AREA FORMS A PART) HAS NOT AS YET BEEN THE SUBJECT OF A BOARD DECISION RESPECTING THE DEFINING OF APPROPRIATE GEOGRAPHIC AREAS. IN A NUMBER OF CASES THE BOARD HAS INDICATED THAT THIS WILL NOT BE DONE UNTIL AN APPROPRIATE CASE ARISES IN WHICH ALL INTERESTED PERSONS WILL BE GIVEN AN OPPORTUNITY TO MAKE THEIR REPRESENTATIONS TO THE BOARD. UNTIL SUCH A CASE IS REACHED, THE BOARD DOES NOT PROPOSE TO GRANT AREAS WHICH MIGHT WELL CONFLICT WITH THE ULTIMATE THINKING OF THE BOARD ON THIS SUBJECT."

9947-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTH AMERICAN STEEL EQUIPMENT COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE CIRCUMSTANCES WHICH LED TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT INCLUDING THE FACT THAT IT APPEARS THAT THE DOCUMENT WAS PREPARED BY THE RESPONDENT AND WAS CIRCULATED BY THE RESPONDENT'S SUPERINTENDENT FOLLOWING A MEETING OF THE EMPLOYEES ADDRESSED BY A DIRECTOR OF THE RESPONDENT WHEREIN THE RESPONDENT MADE CERTAIN PROPOSALS TO THE EMPLOYEES, THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

9949-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. OSHAWA PUBLIC LIBRARY BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT ASSISTANT CHIEF LIBRARIAN AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF LIBRARIAN." (18 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

9950-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #493 (APPLICANT) V. FRANKI OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

9956-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 595 (APPLICANT) V. HEWSON & SON (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

9961-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED OCTOBER 9TH, 1963 BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE HAMILTON CONSTRUCTION ASSOCIATION AND BUILDERS EXCHANGE AND LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA." (3 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT PERSONS WHILE WORKING ON THE WELLAND CANAL PROJECT ARE NOT INCLUDED IN THE BARGAINING UNIT.

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

9772-64-R: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PEPSI-COLA CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN, AND OFFICE STAFF." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	65
NUMBER OF BALLOTS CAST	65
NUMBER OF BALLOTS CAST IN FAVOUR OF APPLICANT	40
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE EMPLOYEES ASSOCIATION OF PEPSI-COLA LTD. (OTTAWA BRANCH)	15
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

9836-64-R: LOCAL UNION NUMBER 304, INTERNATIONAL UNION OF UNITED BREWERY FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. NIAGARA DRY BEVERAGES LIMITED (RESPONDENT) V. NIAGARA DRY EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE RESPONDENT'S PLANT AT HAMILTON, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN

AND OFFICE STAFF." (50 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	44
NUMBER OF BALLOTS CAST	44
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	11

9841-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. FORD MOTOR COMPANY OF CANADA LIMITED (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GLASS FABRICATING OPERATIONS PLANT IN CROWLAND TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PLANT PROTECTION OFFICERS, CHEMISTS, CONFIDENTIAL CLERKS, ENGINEERS AND ENGINEERING TECHNICIANS, EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT, QUALITY CONTROL ENGINEERS AND TECHNICIANS, CHIEF ENGINEER AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SALARIED TECHNICAL PERSONNEL PERFORMING WORK IN THE PLANT ARE NOT INCLUDED IN THE BARGAINING UNIT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING THE TERM TECHNICAL PERSONNEL, INCLUDES PROCESSORS, WORK STANDARDS AND METHODS MEN, CHEMISTS, MATERIAL HANDLING METHODS MEN AND QUALIFIED ENGINEERS DOING ENGINEER'S WORK."

NUMBER OF NAMES ON VOTERS' LIST	4
NUMBER OF BALLOTS CAST	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

9874-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. JOHN WOOD COMPANY LIMITED (RESPONDENT) v. THE EMPLOYEES ASSOCIATION OF THE TORONTO PLANT OF JOHN WOOD COMPANY LIMITED (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, SALES STAFF AND SECURITY GUARDS." (235 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	235
NUMBER OF BALLOTS CAST	235
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	171



ALL OF THE DAY SHIFT EMPLOYEES WERE IN ATTENDANCE AT THIS MEETING.

WHILE THIS MEETING TOOK PLACE AND THESE STATEMENTS WERE MADE WITHIN A FEW DAYS OF THE MAKING OF THIS APPLICATION, IT IS OF INTEREST TO NOTE THAT NO CHARGES OF UNFAIR PRACTICE WERE MADE BY THE APPLICANT AGAINST THE RESPONDENT WITH RESPECT TO WHAT WAS SAID AT THE MEETING.

HAVING REGARD TO ALL OF THE EVIDENCE WITH RESPECT TO WHAT TRANSPIRED AT THE MEETING, THE FACT THAT THE MEETING WAS HELD PRIOR TO THE APPLICATION BEING MADE, AND THE FACT THAT NO THREATS OR PROMISES WERE MADE, WE ARE OF THE OPINION THAT THE STATEMENTS MADE BY THE EMPLOYER IN THESE CIRCUMSTANCES, DID NOT CONTRAVENE THE SPIRIT OF SECTION 48 OF THE LABOUR RELATIONS ACT AND FELL WITHIN THAT PART OF SECTION 48 WHICH RESERVES TO THE EMPLOYER THE FREEDOM "TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

WE ACCORDINGLY FIND THAT SINCE THE EMPLOYER DID NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE AND SINCE THE APPLICANT CLAIMED AS MEMBERS SOME OF THE PERSONS WHOSE SIGNATURES ON THE PETITION WERE OBTAINED AND WITNESSED BY THE EMPLOYEE WHO IDENTIFIED THE DOCUMENT AT THE HEARING, WE ARE PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

I DISSENT.

IN ALL THE CIRCUMSTANCES OF THIS CASE I FEEL NO WEIGHT SHOULD BE GIVEN TO THE PETITION. FIRST, I AM NOT FULLY INFORMED OF HOW THE PETITION WAS CIRCULATED.

WHILE THE PETITION HAS 20 SIGNATURES ON IT THE WITNESS COULD ONLY IDENTIFY 11 SIGNATURES, AND IN ADDITION THERE WAS ONE OTHER HE WAS NOT SURE OF. THIS LEAVES 8 OR 9 SIGNATURES UNIDENTIFIED AND THE BOARD HAS NO KNOWLEDGE WHO THE PERSON IS, WHO GOT THESE SIGNATURES, NOR DOES THE BOARD KNOW WHEN AND WHERE THEY WERE SIGNED.

THERE WAS ALSO EVIDENCE THAT THE COMPANY PRESIDENT CALLED A MEETING PRIOR TO THE APPLICATION BEING MADE, WHICH WAS HELD ON THE PREMISES IN THE CAFETERIA, ATTENDED BY ALL THE DAY WORKERS. THIS MEETING LASTED SOME 10 MINUTES AND AMONG SOME OF THE THINGS SAID WE FIND STATEMENT MADE BY THE PRESIDENT OF THE COMPANY. "HE HEARD A UNION WAS TRYING TO GET IN THE PLANT". "HE KNEW SOMETHINGS LACKING - DOING HIS BEST - BUILT A CAFETERIA - MADE PLANT LARGER - PURCHASED NEW MACHINERS" "WASN'T HIGHEST PAID COMPANY - BUT NOT LOWEST NEITHER" "FOR COMPANY TO GROW TOOK A GREAT DEAL OF CAPITAL" "WANTED EVERYONE TO FEEL PART OF THE COMPANY - WANTED EMPLOYEES TO GROW WITH COMPANY". TAKING ALL THESE QUOTATIONS INTO CONSIDERATION IT IS MY OPINION THE COMPANY HAD ONE AND ONLY ONE PURPOSE IN MIND -



"EMPLOYEES KEEP THE UNION OUT, I DON'T WANT ONE" WE CAN LOOK AFTER YOU WITHOUT A UNION.

THEREFORE I CAN COME TO NO OTHER CONCLUSION THE PETITION WAS INSPIRED BY MANAGEMENT AND TOGETHER WITH UNSATISFACTORY EVIDENCE OF THE CIRCULATION OF THE PETITION I WOULD HAVE DISALLOWED THE PETITION AND CERTIFIED OUTRIGHT."

9881-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT)  
V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (26 EMPLOYEES).

- AND -

9891-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON-  
WORKERS, LOCAL 736 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT)  
V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA,  
LOCAL 837 (INTERVENER). (8 EMPLOYEES).

THE BOARD ENDORSED THE RECORDS OF BOTH THE ABOVE APPLICATIONS AS FOLLOWS:-

"THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA APPLIED TO THE BOARD TO BE CERTIFIED FOR CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. IN A SEPARATE APPLICATION, THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON-WORKERS, LOCAL 736 ALSO APPLIED TO THE BOARD TO BE CERTIFIED FOR ALL RODMEN OF THE RESPONDENT WHO ARE EMPLOYED ON ALL WORK IN CONNECTION WITH FIELD FABRICATION, HANDLING, RACKING, SORTING, CUTTING, BENDING, HOISTING, PLACING, BURNING, WELDING AND TIEING OF ALL MATERIALS USED IN REINFORCED CONCRETE CONSTRUCTION, IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND. IN EACH CASE THE RESPONDENT, IN ITS REPLY, TOOK THE POSITION THAT THE APPLICATION SHOULD HAVE BEEN MADE TO THE CANADA LABOUR RELATIONS BOARD AND THAT THE ONTARIO LABOUR RELATIONS BOARD WAS WITHOUT JURISDICTION TO DEAL WITH THE CASE. WHEN THE MATTERS CAME ON FOR HEARING, THE TWO APPLICATIONS WERE JOINED IN SO FAR AS THE QUESTION OF JURISDICTION WAS CONCERNED.

AT THE HEARING THE PARTIES AGREED TO THE FOLLOWING FACTS:

THE RESPONDENT COMPANY HAS ENTERED INTO A CONTRACT WITH THE ST. LAWRENCE SEAWAY AUTHORITY TO EXECUTE THE FOLLOWING WORK:  
"MODIFICATIONS AND RECONSTRUCTION AT LOWER END OF EXISTING LOCK #2 - WELLAND CANAL TWINNING PROJECT". ATTACHED TO AND FORMING PART OF THE CONTRACT IS A DOCUMENT ENTITLED "LABOUR CONDITIONS" UNDER WHICH MINIMUM RATES AND MAXIMUM HOURS ARE ESTABLISHED BY THE FEDERAL MINISTER OF LABOUR. THESE CONDITIONS CONTAIN A LIMITED LICENCE FOR OVER-TIME WORK.

THE RESPONDENT FILED WITH THE BOARD AN UNSIGNED AND, IN SOME RESPECTS, AN INCOMPLETE COPY OF THE

ARE OF THE OPINION THAT ALL EMPLOYEES OF THE RESPONDENT ARE COVERED BY THE COLLECTIVE AGREEMENT, REGARDLESS OF WHETHER OR NOT A CLASSIFICATION HAS BEEN DESIGNATED FOR THEM, OR WHETHER OR NOT A WAGE RATE HAS BEEN AGREED UPON BY THE PARTIES. WE WOULD ADD THAT, IN OUR VIEW, THE FACT OF COMPLIANCE OR NON-COMPLIANCE WITH THE UNION MEMBERSHIP PROVISION OF THE COLLECTIVE AGREEMENT IS NOT A RELEVANT CONSIDERATION. AN ADMISSION BY THE INTERVENER, OR EVIDENCE THAT THE INTERVENER HAD EITHER ABANDONED ITS BARGAINING RIGHTS FOR THE EMPLOYEES OR NEGOTIATED THEM OUT OF THE COLLECTIVE AGREEMENT, OF COURSE, WOULD BE MATERIAL CONSIDERATIONS. THERE IS, HOWEVER, NO SUCH ADMISSION OR EVIDENCE BEFORE THE BOARD UPON WHICH IT COULD MAKE SUCH FINDINGS. WE WOULD MENTION THAT COUNSEL FOR THE RESPONDENT MADE STATEMENTS AT THE HEARING OF THE BOARD ON JANUARY 27TH, 1965 WHICH LEND THEMSELVES TO THE INFERENCE THAT THE EMPLOYEES IN QUESTION ARE NOT COVERED BY THE COLLECTIVE AGREEMENT. ON CAREFUL EXAMINATION OF THE CIRCUMSTANCES WE CAN ONLY INTERPRET HIS REMARKS TO MEAN THAT THE COMPANY AND THE UNION HAVE NOT BARGAINED WITH RESPECT TO THESE EMPLOYEES.

HAVING REGARD TO THE BOARD'S FINDING THAT ALL OF THE EMPLOYEES OF THE RESPONDENT, INCLUDING THOSE WITH WHOM WE ARE CONCERNED IN THIS APPLICATION, ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE ONLY POSSIBLE APPROPRIATE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT MIGHT BE ENTITLED TO CERTIFICATION, IN THE CIRCUMSTANCES OF THIS CASE, IS A CRAFT UNIT OF "STATIONARY ENGINEERS AND THEIR HELPERS". IN THE LIGHT OF THE EVIDENCE RELATING TO THE DUTIES OF THE EMPLOYEES IN QUESTION AND THE FACT THAT NONE OF THEM HOLD A CERTIFICATE AS A STATIONARY ENGINEER, THE BOARD FINDS THAT THERE IS NO APPROPRIATE CRAFT UNIT. WE WOULD ADD THAT EVEN IF THERE WAS AN APPROPRIATE CRAFT UNIT OF STATIONARY ENGINEERS AND THEIR HELPERS, THE PROVISIONS OF SECTION 5(3) OF THE LABOUR RELATIONS ACT WOULD MAKE THIS APPLICATION UNTIMELY.

THE APPLICATION ACCORDINGLY IS DISMISSED."

BOARD MEMBER D. B. ARCHER WHILE NOT DISSENTING SAID:-

"I CONCUR WITH THE DECISION OF MY COLLEAGUES. HOWEVER, I AM DISTURBED THAT AN AGREEMENT WHICH ON ITS FACE COVERS THESE EMPLOYEES, SEEMS, DUE TO THE LAXITY OF THE UNION, NOT TO APPLY TO THEM. THIS COULD LEAD TO GREAT DIFFICULTIES FOR EVERYONE INVOLVED AND IT IS ONLY THE FACT THAT I BELIEVE THERE WAS NO INTENTION ON THE UNION'S PART TO DEPRIVE THESE EMPLOYEES OF THEIR RIGHTS OR TO ABANDON THEM COMPLETELY THAT I CONCUR IN THIS DECISION."

9863-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. THE FOUR SEASONS MOTOR HOTEL LIMITED (RESPONDENT) V. HOTEL AND CLUB EMPLOYEES UNION, LOCAL 299 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION A-F-L, C-I-O, C-L-C. (INTERVENER). (2 EMPLOYEES).

THIS APPLICATION WAS IN RESPECT OF THE PREMISES OF THE RESPONDENT AT 415 JARVIS ST. TORONTO. A COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT WHICH WAS FILED WITH THE BOARD IS EFFECTIVE FROM MARCH 10, 1963 TO

MARCH 9, 1968, AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. WITH THE EXCEPTION OF THESE DETAILS THE BOARD'S ENDORSEMENT IS SIMILAR IN WORDING TO THAT OF FILE NO. 9862-64-R ABOVE.

THE COMMENTS OF BOARD MEMBER D. B. ARCHER ARE IDENTICAL IN BOTH APPLICATIONS.

9875-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. ECHLIN-UNITED OF CANADA LIMITED (RESPONDENT). (30 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AFTER A HEARING OF THE BOARD IN THIS MATTER. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

9881-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (26 EMPLOYEES).

- AND -

9891-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 736 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 837 (INTERVENER). (8 EMPLOYEES).

(FOR BOTH APPLICATIONS SEE INDEXED ENDORSEMENT PAGE 576).

9884-64-R: THE PATTERN MAKERS' LEAGUE OF NORTH AMERICA THE TORONTO ASSOCIATION (APPLICANT) V. PATTERN ENGINEERING COMPANY (RESPONDENT). (7 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS MATTER DOES NOT BEAR THE SIGNATURE OF ANY OF THE EMPLOYEES CLAIMED BY THE APPLICANT AS MEMBERS AS REQUIRED BY SECTION 50 OF THE BOARD'S RULES OF PROCEDURE.

THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CANNOT, THEREFORE, BE ACCEPTED BY THE BOARD AND THIS APPLICATION IS ACCORDINGLY DISMISSED."

9892-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. NEWMAN BROS. CO. LIMITED (RESPONDENT). V. INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 837 (INTERVENER). (19 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS NOTIFIED THE BOARD THAT AGREEMENT HAS BEEN REACHED BETWEEN THE APPLICANT AND THE RESPONDENT AND HAS REQUESTED LEAVE TO WITHDRAW THE APPLICATION.

IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."



9912-64-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PHILLIPS CABLES LIMITED (RESPONDENT). (79 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT FILED FORM 9 A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS OVER THE SIGNATURE OF JANINE THEORET, THE REPRESENTATIVE OF THE APPLICANT. WHILE THIS DECLARATION INDICATES IN ITEM #1 THAT DOCUMENTARY EVIDENCE OF MEMBERSHIP WAS SUBMITTED BY THE APPLICANT ON BEHALF OF 54 PERSONS, MISS THEORET FAILED TO COMPLETE ITEM #2 TO INDICATE WHAT THE DOCUMENTARY EVIDENCE CONSISTED OF AND FURTHER FAILED TO COMPLETE ITEM #3 AND THEREBY INDICATE WHETHER HER KNOWLEDGE CONCERNING THE COLLECTORS AND THE PERSONS WHOSE NAMES APPEAR ON THE MEMBERSHIP DOCUMENTS WAS BASED ON PERSONAL KNOWLEDGE OR INQUIRIES WHICH SHE HAS MADE.

AT THE HEARING MISS THEORET WAS GIVEN AN OPPORTUNITY BY THE BOARD TO COMPLETE THE INFORMATION WHICH WAS OMITTED FROM THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) BY VIVA VOCE EVIDENCE. MISS THEORET ADVISED THE BOARD THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH WAS FILED ON BEHALF OF THE 54 EMPLOYEES CONSISTED OF COMBINATION APPLICATION CARDS AND RECEIPTS. HOWEVER, IT WOULD APPEAR THAT WHILE MISS THEORET HAD PERSONAL KNOWLEDGE WITH RESPECT TO SOME OF THE MEMBERSHIP DOCUMENTS, SHE DID NOT HAVE PERSONAL KNOWLEDGE, NOR DID SHE MAKE INQUIRIES OF THE COLLECTORS WITH RESPECT TO OTHER MEMBERSHIP DOCUMENTS. ON THE ADMISSION OF MISS THEORET, THE BOARD IS IMPELLED TO FIND THAT MISS THEORET DID NOT HAVE THE NECESSARY INFORMATION WHICH WOULD PERMIT HER TO PROPERLY COMPLETE THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9).

SINCE THE BOARD'S RULES REQUIRE THAT A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) BE COMPLETED ON BEHALF OF THE APPLICANT FOR CERTIFICATION AND SINCE THE FORM 9 IN THIS MATTER WAS NOT IN FACT COMPLETED NOR WAS THE MATTER RECTIFIED BY VIVA VOCE EVIDENCE THIS APPLICATION MUST FAIL.

THIS APPLICATION IS THEREFORE DISMISSED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT.

I WOULD FIND THAT THE COMBINATION APPLICATION FOR MEMBERSHIP CARD AND RECEIPT WHICH ON ITS FACE INDICATES OVER THE SIGNATURE OF THE MEMBER THAT THE PERSON HAS APPLIED FOR MEMBERSHIP IN THE APPLICANT TRADE UNION AND THAT A PERSON WHO ACTED AS A COLLECTOR HAS SIGNED A RECEIPT INDICATING THAT HE HAD IN FACT RECEIVED \$1.00 INITIATION FEE WHICH PAYMENT WAS CONFIRMED OVER THE SIGNATURE OF THE MEMBER, IS SUFFICIENT EVIDENCE OF MEMBERSHIP. I WOULD FIND THE COMBINATION APPLICATION CARD AND RECEIPT WHICH WAS COUNTERSIGNED BY THE MEMBER IS SUFFICIENT PROOF OF PAYMENT, THEREBY OBIATING THE NECESSITY FOR THE COMPLETION OF ITEM 3 IN FORM 9.

I WOULD ACCORDINGLY HAVE CERTIFIED THE APPLICANT."



9962-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)  
V. A. W. HOHME GENERAL CONTRACTORS LTD. (RESPONDENT) (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE THE APPLICATION IS THEREFORE DISMISSED."

10007-64-R: INTERNATIONAL HOV CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #837 (APPLICANT) V. CATER CONSTRUCTION CO. LTD. (RESPONDENT). (36 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IT APPEARS CLEAR FROM BOTH THE APPLICATION AND THE REPLY THAT THE EMPLOYEES AFFECTED BY THE APPLICATION ARE ENGAGED SOLELY IN WORK ON THE WELLAND CANAL. THE RESPONDENT DOES NOT HAVE ANY OTHER WORK IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, THE AREA PROPOSED BY THE APPLICANT.

IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE DECISION OF THE BOARD IN SCHWENGER CONSTRUCTION LIMITED, BOARD FILES #9881-64-R AND #9891-64-R, THE BOARD FINDS IT IS WITHOUT JURISDICTION TO DEAL WITH THE APPLICATION. THESE PROCEEDINGS ARE THEREFORE TERMINATED.

IT IS POINTED OUT THAT IF ANY PARTY FEELS THAT THE BOARD HAS ERRED IN ANY WAY IT IS ALWAYS OPEN TO THAT PARTY TO ASK THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. HAVING REGARD TO MY VIEWS EXPRESSED IN THE SCHWENGER CONSTRUCTION LIMITED CASE I WOULD HAVE ENTERTAINED THE APPLICATION."

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

9995-64-R: INTERNATIONAL HOV CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (APPLICANT) V. MASCIOLI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST  
NUMBER OF BALLOTS CAST  
NUMBER OF BALLOTS SEGREGATED AND  
NOT COUNTED

12  
12

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:-

"THE FACTS IN THIS CASE ARE CLEARLY WITHIN THE SCOPE OF THE DECISION OF THE BOARD IN THE RIX-ATHABASKA CASE, O.L.R.B. MONTHLY REPORT, JULY 1961, P. 127. FOLLOWING THAT DECISION IT IS THE BOARD'S RULING IN THE PRESENT CASE THAT THE EMPLOYEES WHO CAST SEGREGATED BALLOTS IN THE REPRESENTATION VOTE IN THIS MATTER WERE NOT ELIGIBLE TO VOTE."

9698-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. IMPERIAL EASTMAN CORPORATION (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	47
NUMBER OF BALLOTS CAST	46
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29

(SEE INDEXED ENDORSEMENT PAGE 574).

9837-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BUTCHER ENGINEERING ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	31
NUMBER OF BALLOTS CAST	31
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

9832-64-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E., I.O., A.F.I., O.I.U., C.L.C. (APPLICANT) V. THE BOARD OF EDUCATION OF THE CITY OF WOODSTOCK (RESPONDENT). (37 EMPLOYEES).

9885-64-R: THE PATTERN MAKERS' LEAGUE OF NORTH AMERICAN THE TORONTO ASSOCIATION

(APPLICANT) V. HY-DU-PLAST TOOL AND PATTERN COMPANY LIMITED (RESPONDENT).  
(10 EMPLOYEES).

9886-64-R: THE PATTERN MAKERS' LEAGUE OF NORTH AMERICAN THE TORONTO ASSOCIATION  
(APPLICANT) V. McALPINE PATTERN WORKS (RESPONDENT). (4 EMPLOYEES).

9887-64-R: THE PATTERN MAKERS' LEAGUE OF NORTH AMERICAN THE TORONTO ASSOCIATION  
(APPLICANT) V. NEW STANDARD PATTERN WORKS (RESPONDENT). (10 EMPLOYEES).

9888-64-R: THE PATTERN MAKERS' LEAGUE OF NORTH AMERICAN THE TORONTO ASSOCIATION  
(APPLICANT) V. TORONTO PATTERN WORKS LIMITED (RESPONDENT). (18 EMPLOYEES).

9908-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION  
1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY  
(APPLICANT) V. CRESTILE LTD. (RESPONDENT). (3 EMPLOYEES).

9945-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION  
1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY  
(APPLICANT) V. LIVERMAN PLASTERING ASSOCIATES (RESPONDENT) V. WOOD, WIRE &  
METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (INTERVENER). (27 EMPLOYEES).

9952-64-R: THE ST. CATHARINES WATER WORKS FILTRATION PLANT EMPLOYEES ASSOCIATION  
(APPLICANT) V. THE ST. CATHARINES WATER WORKS COMMISSION (RESPONDENT).  
(14 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF  
DURING FEBRUARY

9901-64-R: WEYERHAEUSER CANADA LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS  
OF AMERICA (RESPONDENT). (GRANTED). (25 EMPLOYEES).

(RE: WEYERHAEUSER CANADA LIMITED,  
SAULT STE. MARIE, ONTARIO).

THE RESPONDENT HAVING ADVISED THE BOARD THAT IT DID NOT INTEND TO  
ASSERT ITS RIGHTS OR TO DISPUTE THE APPLICATION, THE BOARD FOUND THAT THE RESPONDENT  
HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES CONCERNED.

9914-64-R: R. G. McLEAM LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF  
BOOKBINDERS LOCAL NUMBER 28 (RESPONDENT). (DISMISSED) (3 EMPLOYEES).

(RE: R. G. McLEAM LTD.,  
TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT APPLIED ON JANUARY 26TH, 1965, FOR A DECLARATION  
TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE  
PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT.

FOLLOWING SERVICE OF A NOTICE TO BARGAIN PURSUANT TO THE PROVI-  
SIONS OF SECTION 40 OF THE LABOUR RELATIONS ACT THE APPLICANT AND  
RESPONDENT CONTINUED TO BARGAIN UP TO DECEMBER 14TH, 1964.

SINCE A PERIOD OF 60 DAYS HAS NOT ELAPSED PRIOR TO THE DATE OF THIS APPLICATION DURING WHICH THE RESPONDENT HAS NOT SOUGHT TO BARGAIN THIS APPLICATION IS UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 45 (2) OF THE LABOUR RELATIONS ACT.

THE APPLICATION IS THEREFORE DISMISSED."

9915-64-R: EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY (APPLICANT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (RESPONDENT). (DISMISSED). (10 EMPLOYEES).

(RE: CANADIAN WIRE BRUSH COMPANY,  
BARRIE, ONTARIO).

ON FEBRUARY 3, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANTS HAVE APPLIED ON JANUARY 28, 1965, PURSUANT TO THE PROVISIONS OF SECTION 45(2) OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF CANADIAN WIRE BRUSH COMPANY REPRESENTED BY THE RESPONDENT.

IT WOULD APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND CANADIAN WIRE BRUSH COMPANY ON JANUARY 14, 1965.

SECTION 45(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR CONCILIATION SERVICES CAN ONLY BE MADE PURSUANT TO THAT SECTION BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER.

IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 45(2), THAT THIS APPLICATION IS UNTIMELY.

THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 15TH DAY OF FEBRUARY, 1965, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR, THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS, AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE APPLICANTS IN THEIR LETTER OF FEBRUARY 8, 1965 WHICH THEY SENT TO THE BOARD IN RESPONSE TO THE BOARD'S DIRECTION MADE IN ITS DECISION OF FEBRUARY 3, 1965. THE BOARD NOW FINDS THAT, SINCE A CONCILIATION OFFICER HAD



BEEN APPOINTED BY THE MINISTER PRIOR TO THE TIME WHEN THIS APPLICATION WAS MADE, THE APPLICANTS ARE NOT ENTITLED TO MAKE AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNDER SECTION 45(2) OF THE LABOUR RELATIONS ACT.

THE APPLICATION IS ACCORDINGLY TERMINATED."

9942-64-R: THOMAS KENT (APPLICANT) V. LOBLAW WORKERS COUNCIL (RESPONDENT)  
V. SUPER CITY DISCOUNT FOODS LIMITED (INTERVENER). (WITHDRAWN) (10 EMPLOYEES).

(RE: SUPER CITY DISCOUNT FOODS LIMITED,  
TORONTO, ONTARIO).

9965-64-R: TERESA IORFIDA, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

- AND -

9966-64-R: MARIA SILECI, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

- AND -

9967-64-R: BARBARA SCOTT, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

- AND -

9968-64-R: WALLACE DUMONT, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

- AND -

9969-64-R: CORINE THORPE, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

- AND -

9993-64-R: TERESA DELEO, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) V. HOTELS,  
CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED  
OTTAWA, ONTARIO).

9994-64-R: LORRAINE METZ, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

9995-64-R: ADELIA DALOISIO, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

9996-64-R: LENA CUFFARO, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

9997-64-R: ALFANSINO SANTARONITA, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

9998-64-R: MONA KALIFE, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

9999-64-R: MARGARET O'CONNOR, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

10000-64-R: ANITA ZIGANTI, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 (RESPONDENT) (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

10001-64-R: LOMER ARSENEAULT, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

10002-64-R: MARGARET RAYMOND, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

- AND -

10003-64-R: RICHARD CLEMENTS, BRUCE MACDONALD MOTOR HOTEL (APPLICANT) v. HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT). (DISMISSED).

(RE: BRUCE MACDONALD LIMITED,  
OTTAWA, ONTARIO).

THE ABOVE MATTERS WERE CONSOLIDATED AND AFFECTED 19 EMPLOYEES.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE RESPONDENT WAS CERTIFIED AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF BRUCE MACDONALD LIMITED AT THE BRUCE MACDONALD MOTOR HOTEL AT OTTAWA, SAVE AND EXCEPT MANAGER, DEPARTMENT HEADS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ON THE 4TH DAY OF MAY, 1964.

THIS APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNDER SECTION 43 OF THE LABOUR RELATIONS ACT WAS MADE ON THE 9TH DAY OF FEBRUARY, 1965.

SECTION 43(1) OF THE LABOUR RELATIONS ACT PROVIDES, INTER ALIA, THAT IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

SINCE A YEAR HAS NOT ELAPSED BETWEEN THE DATE OF THE CERTIFICATION AND THE DATE OF THIS APPLICATION, THIS APPLICATION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

10014-64-R: JAKE PAUL KLEIN AND DANIEL ERVIN CHRISTINK (APPLICANTS) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 879 (RESPONDENT). (DISMISSED).

(RE: BOESE FOODS LTD.,  
ST. CATHARINES, ONTARIO).

- AND -

10015-64-R: JAKE PAUL KLEIN (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 879 (RESPONDENT).  
(DISMISSED).

(RE: BOESE FOODS LTD.,  
ST. CATHARINES, ONTARIO).

- AND -

10016-64-R: DANIEL ERVIN CHRISTINK (APPLICANT) V. INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 879  
(RESPONDENT). (DISMISSED).

(RE: BOESE FOODS LTD.,  
ST. CATHARINES, ONTARIO).

THE ABOVE MATTERS WERE CONSOLIDATED AND AFFECTED 3 EMPLOYEES.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS  
ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE  
RESPONDENTS WAS MADE ON THE 12TH DAY OF FEBRUARY, 1965.

SECTION 43 (1) OF THE LABOUR RELATIONS ACT PROVIDES, INTER  
ALIA, THAT IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT  
WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY  
OF THE EMPLOYEES IN THE BARGAINING UNIT MAY APPLY TO THE BOARD  
FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE  
EMPLOYEES IN THE BARGAINING UNIT.

SINCE A YEAR HAS NOT ELAPSED BETWEEN THE DATE OF THE CERTI-  
FICATION AND THE DATE OF THE MAKING OF THIS APPLICATION, THIS  
APPLICATION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE  
PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE  
BOARD IS OF THE OPINION THAT THE APPLICANT HAS FAILED TO MAKE A  
PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS  
THEREFORE DISMISSED."

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING FEBRUARY

2905-64-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, (APPLICANT)  
V. UNION GAS COMPANY OF CANADA LIMITED (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF  
TRANSFER OF JURISDICTION, THE SUCCESSOR TO NATIONAL UNION  
OF NATURAL GAS WORKERS LOCAL 19 C.L.C., WHICH WAS THE  
BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT  
DEFINED IN A COLLECTIVE AGREEMENT BETWEEN UNION GAS  
COMPANY OF CANADA LIMITED, ITS SUBSIDIARY ONTARIO NATURAL  
GAS STORAGE AND PIPELINES LIMITED AND NATIONAL UNION OF  
NATURAL GAS WORKERS LOCAL 19 C.L.C., ENTERED INTO AS OF  
THE 1ST DAY OF MARCH, 1962, AND EFFECTIVE FROM THE 1ST



DAY OF MARCH, 1962, TO THE 28TH DAY OF FEBRUARY, 1962,  
WITH YEAR TO YEAR RENEWAL SUBJECT OT NOTICE."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

9204-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. ALGER PRESS LIMITED AND STEWART ALGER (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 579 ).

9805-64-U: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351, (FORMERLY KNOWN AS THE CLEANERS, DYERS, AND LAUNDRY WORKERS UNION, LOCAL 351, A.F. OF L.) (APPLICANT) V. GARDEN CITY LAUNDRY LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 582 ).

9812-64-U: MCPHERSON WAREHOUSING COMPANY LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 583 ).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF  
DURING FEBRUARY

9335-64-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. HAMILTON WIRE PRODUCTS COMPANY LTD. (RESPONDENT).

9708-64-U: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (COMPLAINANT) V. HAMILTON AUTOMOTIVE TRIM LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON EVELYN DUNK WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59(A) OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY THE COMPLAINANT ALLEGES THAT ON NOVEMBER 16TH, 1964 MR. A. TINSLEY, THE OFFICE MANAGER OF THE RESPONDENT COMPANY, DISCHARGED EVELYN DUNK BECAUSE SHE WAS A MEMBER OF THE COMPLAINANT TRADE UNION AND WAS EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT.

THE EVIDENCE OF MRS. DUNK IS THAT SHE COMMENCED HER EMPLOYMENT WITH THE RESPONDENT COMPANY ON SEPTEMBER 16TH, 1964 AS A SEWING MACHINE OPERATOR. DURING THE COURSE OF HER EMPLOYMENT SHE WORKED ON A VARIETY OF SEWING OPERATIONS IN THE PREPARATION OF UPHOLSTERY FOR THE INTERIOR OF AUTOMOBILES. SHE TESTIFIED THAT AT ALL TIMES HER WORK WAS SATISFACTORY, AND THAT, WITH A COUPLE OF MINOR EXCEPTIONS, SHE HAD NOT BEEN CRITICIZED BY ANY MEMBER OF MANAGEMENT. FOUR FELLOW EMPLOYEES WHO ARE ALSO SEWING MACHINE OPERATORS TESTIFIED THAT IN THEIR OBSERVATION MRS. DUNK WAS A SATISFACTORY EMPLOYEE.

BOTH GEORGE TINWICK, THE PRESIDENT OF THE RESPONDENT COMPANY,

AND CLARA BERNIER, THE SUPERVISOR OF THE SEWING MACHINE OPERATORS, TESTIFIED THAT MRS. DUNK WAS DISCHARGED BECAUSE SHE HAD NOT DEVELOPED INTO A SATISFACTORY EMPLOYEE. THE EVIDENCE OF BOTH IS THAT THEY HAD NO CRITICISM OF HER WORK AT THE COMMENCEMENT OF HER EMPLOYMENT WHEN SHE WAS WORKING ON CARPETS BUT THAT WHEN SHE WAS TRANSFERRED TO OTHER SEWING OPERATIONS SHE SEEMED TO LOSE INTEREST AND THAT THE QUANTITY AND QUALITY OF HER WORK DETERIORATED UNTIL, ON MISS BERNIER'S RECOMMENDATION, MRS. DUNK WAS DISCHARGED. MR. TINSLEY, THE OFFICE MANAGER, WAS THE PERSON WHO INFORMED MRS. DUNK OF HER DISCHARGE ON NOVEMBER 16TH. BOTH MRS. DUNK AND TINWICK TESTIFIED TO AN ALTERCATION BETWEEN THEM WHEN TINWICK WAS INSTRUCTING HER ON THE SEWING OF CONSOLE BOXES. MISS BERNIER TESTIFIED THAT ON ONE OCCASION SHE HAD TOLD MRS. DUNK THAT SHE (BERNIER) WANTED MORE WORK FROM HER. MRS. DUNK DENIED THAT SHE WAS A SLOW PRODUCER AND THAT SHE HAD BEEN CRITICIZED ON THIS BASIS. MISS BERNIER ALSO STATED THAT MRS. DUNK REGULARLY LEFT HER MACHINE AND THAT SHE (BERNIER) HAD SPOKEN TO HER ABOUT THIS PRACTICE. MRS. DUNK ADMITTED THAT ON ONE OCCASION MISS BERNIER HAD TOLD HER TO RETURN TO HER MACHINE, BUT THAT ON THE OCCASION IN QUESTION MRS. JOSEFIK HAD INSTRUCTED HER TO TAKE SOME MATERIAL TO MISS BERNIER. MISS BERNIER'S EVIDENCE IS THAT ON TWO OR THREE OCCASIONS SHE HAD SPOKEN TO TINWICK ABOUT MRS. DUNK'S UNSATISFACTORY JOB PERFORMANCE. TINWICK TESTIFIED THAT HE RECEIVED CONTINUOUS COMPLAINTS CONCERNING MRS. DUNK FROM MISS BERNIER AND MRS. JOSEFIK, THE ASSISTANT SUPERVISOR.

MRS. DUNK TESTIFIED THAT SHE HAD JOINED THE COMPLAINANT TRADE UNION THREE WEEKS TO A MONTH AFTER SHE COMMENCED HER EMPLOYMENT WITH THE RESPONDENT COMPANY. HER EVIDENCE IS THAT THE UNION WAS REGULARLY DISCUSSED BY THE MACHINE OPERATORS DURING COFFEE AND LUNCH BREAKS AND THAT MRS. JOSEFIK WAS GENERALLY PRESENT. MRS. DUNK STATED THAT SHE HAD TOLD MRS. JOSEFIK THAT SHE WAS A MEMBER OF THE UNION. MRS. DUNK ALSO TESTIFIED THAT MRS. JOSEFIK KNEW THAT THE OTHER GIRLS HAD JOINED THE UNION.

WHILE THERE IS EVIDENCE FROM WHICH AN INFERENCE COULD BE DRAWN THAT TINWICK AND MISS BERNIER HAD KNOWLEDGE THAT MRS. DUNK WAS A MEMBER OF THE UNION, THE SAME INFERENCE COULD BE DRAWN WITH RESPECT TO THE OTHER SEWING MACHINE OPERATORS. THERE IS NO EVIDENCE TO SUGGEST THAT MRS. DUNK WAS IN ANY WAY ACTIVE IN THE UNION ORGANIZING CAMPAIGN. FURTHER, THERE IS NO EVIDENCE ON WHICH WE WOULD BE PREPARED TO FIND THAT SHE WAS A LEADER AMONG THE OTHER EMPLOYEES. WE DO NOT ACCEPT THE SUGGESTION OF COUNSEL FOR THE COMPLAINANT THAT MRS. DUNK WAS DISCHARGED BECAUSE OF HER UNION ACTIVITY AS AN EXAMPLE TO OTHER EMPLOYEES.

WHILE THERE IS A CONSIDERABLE CONFLICT IN THE EVIDENCE RELATING TO THE JOB PERFORMANCE OF MRS. DUNK, THERE APPEARS TO BE SOME GROUNDS FOR MISS BERNIER'S DISSATISFACTION WITH MRS. DUNK. WE WOULD ADD THAT WE DO NOT BELIEVE THAT MRS. DUNK WAS AS UNSATISFACTORY AN EMPLOYEE AS WAS INDICATED BY THE TESTIMONY OF MR. TINWICK. THE EVIDENCE RELATING TO MRS. DUNK'S JOB PERFORMANCE, HOWEVER, DOES NOT LEAD US TO CONCLUDE THAT SHE WAS DISCHARGED BECAUSE OF HER UNION MEMBERSHIP.

HAVING REGARD TO ALL THE EVIDENCE THE BOARD IS NOT SATISFIED THAT

THE RESPONDENT DISCHARGED EVELYN DUNK BECAUSE OF HER UNION MEMBERSHIP OR UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

THE COMPLAINT ACCORDINGLY IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. IN MY OPINION THE EVIDENCE DOES NOT SUPPORT THE CONTENTION OF THE RESPONDENT THAT MRS. DUNK WAS DISCHARGED BECAUSE OF HER UNSATISFACTORY JOB PERFORMANCE. WHILE THERE IS NO EVIDENCE THAT SHE WAS ACTIVE IN THE UNION ORGANIZING CAMPAIGN THERE IS EVIDENCE THAT SHE HAD NO HESITATION IN EXPRESSING HER VIEWS. I WOULD MENTION THAT IN CASES, SUCH THE INSTANT ONE, WHERE THE AGGRIEVED PERSON WAS NOT ACTIVE IN THE ORGANIZING CAMPAIGN OF THE UNION THE BOARD MUST CAREFULLY SCRUTINIZE THE EVIDENCE RELATING TO THE EXPLANATION FOR THE DISCHARGE GIVEN BY THE COMPANY AND ALL THE SURROUNDING CIRCUMSTANCES. IN MY VIEW THE RESPONDENT KNEW THAT MRS. DUNK WAS A MEMBER OF THE UNION AND DISCHARGED HER FOR THAT REASON AS AN EXAMPLE TO OTHER EMPLOYEES, IN AN ATTEMPT TO INFLUENCE THE OUTCOME OF A PENDING REPRESENTATION VOTE DIRECTED BY THE BOARD FOLLOWING A CERTIFICATION APPLICATION MADE BY THE COMPLAINANT UNION."

9813-64-U: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (COMPLAINANT) V. HOMESIDE HOUSE, 229 KENILWORTH AVENUE NORTH, HAMILTON, ONTARIO (RESPONDENT).

9839-64-U: HAROLD PATTERSON (COMPLAINANT) V. WOODVIEW PARK I.G.A. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING CONSIDERED THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING OF THIS MATTER, THE BOARD IS NOT SATISFIED THAT THE COMPLAINANT WAS DISCHARGED FROM HIS EMPLOYMENT IN VIOLATION OF THE LABOUR RELATIONS ACT.

THE APPLICATION IS DISMISSED."

9936-64-U: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. LIGHTNING FASTENER COMPANY LIMITED (RESPONDENT).

10032-64-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 (COMPLAINANT) V. MERCHANTS PAPER Co. (WINDSOR) LTD. (RESPONDENT).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING FEBRUARY

9735-64-M: THE OSHAWA WHOLESALE LIMITED (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 584 ).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE  
UNION MEMBER) DISPOSED OF DURING FEBRUARY

9889-64-M: NEATTA A. COOPER (COMPLAINANT) V. LAUNDRY, DRY CLEANING AND DYE  
HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A DISPOSED OF DURING FEBRUARY

9896-64-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION) V. GILBERT  
FOLEY (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 589 ).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

9698-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. IMPERIAL EASTMAN  
CORPORATION (CANADA) LTD. (RESPONDENT).

ON JANUARY 4, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT, BY LETTER DATED DECEMBER 18TH, 1964, HAS  
REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED DECEMBER  
16TH, 1964, IN THIS MATTER.

THE APPLICANT HAS REPEATED THE ARGUMENT IT MADE AT THE  
HEARING WHEREIN THE APPLICANT ARGUED THAT BECAUSE THE BOARD  
HAD NO EVIDENCE CONCERNING HOW NINE OF TWENTY SIGNATURES WERE  
AFFIXED TO THE PETITION IN THIS MATTER, THE BOARD SHOULD NOT  
"FIND THAT ANY OF THE SIGNATURES WERE VOLUNTARILY AFFIXED OR  
REPRESENT THE TRUE WISHES OF THE EMPLOYEES AND HENCE THE APPLI-  
CANT'S EVIDENCE OF MEMBERSHIP HAS BEEN WEAKENED".

THE BOARD, IN ITS DECISION DATED DECEMBER 16TH, 1964,  
FOUND THAT THE REQUIREMENTS OF SECTION 11 (3) OF THE BOARD'S  
RULES OF PROCEDURE HAD NOT BEEN SATISFIED WITH RESPECT TO  
NINE OF THE SIGNATURES ON THE PETITION AND IN ACCORDANCE WITH THE  
PROVISIONS OF THAT SECTION OF THE RULES THE BOARD DISPOSED OF THE  
APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY OF  
THE NINE EMPLOYEES BECAUSE THEY FAILED TO APPEAR IN PERSON OR BY  
REPRESENTATIVE AND ADDUCE EVIDENCE CONCERNING THE MANNER IN WHICH  
THEIR SIGNATURES WERE OBTAINED.

HOWEVER, THE MAJORITY OF THE BOARD, ACTING IN ACCORDANCE  
WITH THE PROVISIONS OF SECTION 11 (3) OF THE BOARD'S RULES OF  
PROCEDURE HAD EVIDENCE, THROUGH THE WITNESS WHO REPRESENTED A  
TOTAL OF ELEVEN EMPLOYEES, CONCERNING THE ORIGINATION OF THE  
PETITION AND THE MANNER IN WHICH ELEVEN OF THE SIGNATURES ON THE  
PETITION WERE OBTAINED AND THE MAJORITY OF THE BOARD BEING SATIS-  
FIED WITH THIS EVIDENCE GAVE EFFECT TO IT AND FOUND THAT SUFFICIENT  
MEMBERSHIP EVIDENCE OF THE APPLICANT WAS PLACED IN DOUBT THEREBY  
REQUIRING THAT A REPRESENTATION VOTE BE TAKEN.

SINCE THE BOARD CONSIDERED ALL THE ISSUES RAISED IN THE



APPLICANT'S LETTER PRIOR TO ARRIVING AT ITS DECISION DATED DECEMBER 16TH, 1964, AND SINCE THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE TO IT WHICH WAS NOT AVAILABLE AT THE TIME OF THE HEARING IN THIS MATTER, THE BOARD DOES NOT DEEM IT ADVISABLE TO RE-CONSIDER, VARY OR REVOKE ITS DECISION DATED DECEMBER 16TH, 1964, AND THE APPLICANT'S REQUEST IS THEREFORE DENIED."

BOARD MEMBER E. BOYER WHILE NOT DISSENTING SAID:

"WITHOUT ALTERING THE VIEWS I EXPRESSED IN MY DISSENT DATED DECEMBER 16TH, 1964, I AGREE WITH THE MAJORITY THAT THE APPLICANT IS NOT ENTITLED TO HAVE THE BOARD REVIEW ITS DECISION DATED DECEMBER 16TH, 1964, IN THIS MATTER."

INDEXED ENDORSEMENTS - CERTIFICATION

9698-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. IMPERIAL EASTMAN CORPORATION (CANADA) LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"AN EMPLOYEE OF THE RESPONDENT WHO TESTIFIED IN SUPPORT OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION WHICH CONTAINED A TOTAL OF TWENTY SIGNATURES, STATED THAT HE HAD PREPARED THE DOCUMENT AT HIS HOME AND HAD OBTAINED A TOTAL OF ELEVEN SIGNATURES ON THE DOCUMENT OUTSIDE OF THE RESPONDENT'S PREMISES IN SUCH A MANNER AS TO NEGATE ANY POSSIBLE INFLUENCE OF MANAGEMENT.

SINCE NO EVIDENCE WAS ADDUCED WITH RESPECT TO THE MANNER IN WHICH THE OTHER NINE EMPLOYEES WHO SIGNED THE PETITION CAUSED THEIR NAMES TO BE AFFIXED TO THE DOCUMENT, THE BOARD IS NOT PREPARED TO HOLD THAT THE SIGNATURES OF THE NINE EMPLOYEES IN ANY WAY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

THE EMPLOYEE WHO TESTIFIED IN SUPPORT OF THE PETITION ALSO STATED THAT THE PRESIDENT OF THE RESPONDENT ADDRESSED THE MEETING OF EMPLOYEES WHICH WAS HELD A FEW DAYS PRIOR TO THE MAKING OF THIS APPLICATION, AT WHICH TIME THE PRESIDENT INFORMED THE EMPLOYEES THAT IT HAD COME TO HIS ATTENTION THAT THE APPLICANT WAS ATTEMPTING TO ORGANIZE THE EMPLOYEES. THE PRESIDENT ADVISED THE EMPLOYEES THAT WHILE THE SELECTION OF THE UNION WAS A MATTER OF THEIR OWN FREE CHOICE, THE QUESTION OF THE UNION COULD NOT BE DISCUSSED ON PLANT PROPERTY OR ON COMPANY TIME. THE PRESIDENT WENT ON TO SAY THAT THE COMPANY WAS A YOUNG COMPANY, SOME THREE YEARS OLD, AND HE WANTED ALL THE EMPLOYEES TO FEEL THAT THEY WERE PART OF THE COMPANY. HE SAID THAT HE KNEW SOME THINGS WERE LACKING BUT HE WAS DOING HIS BEST AND POINTED OUT THAT THE PLANT HAD BEEN ENLARGED, A NEW CAFETERIA HAD BEEN BUILT AND ADDITIONAL MACHINERY HAD BEEN PURCHASED. HE ADVISED THE EMPLOYEES THAT THEY WERE "FURTHERMOST" IN HIS MIND AND HE WANTED THEM TO FEEL THAT THEY WERE PART OF THE COMPANY AND THAT THE COMPANY COULD NOT PROGRESS WITHOUT THE EMPLOYEES. HE ACKNOWLEDGED THAT WHILE THE EMPLOYEES OF THE COMPANY WERE NOT THE HIGHEST PAID, NEITHER WERE THEY THE LOWEST PAID EMPLOYEES IN THE AREA.

ALL OF THE DAY SHIFT EMPLOYEES WERE IN ATTENDANCE AT THIS MEETING.

WHILE THIS MEETING TOOK PLACE AND THESE STATEMENTS WERE MADE WITHIN A FEW DAYS OF THE MAKING OF THIS APPLICATION, IT IS OF INTEREST TO NOTE THAT NO CHARGES OF UNFAIR PRACTICE WERE MADE BY THE APPLICANT AGAINST THE RESPONDENT WITH RESPECT TO WHAT WAS SAID AT THE MEETING.

HAVING REGARD TO ALL OF THE EVIDENCE WITH RESPECT TO WHAT TRANSPIRED AT THE MEETING, THE FACT THAT THE MEETING WAS HELD PRIOR TO THE APPLICATION BEING MADE, AND THE FACT THAT NO THREATS OR PROMISES WERE MADE, WE ARE OF THE OPINION THAT THE STATEMENTS MADE BY THE EMPLOYER IN THESE CIRCUMSTANCES, DID NOT CONTRAVENE THE SPIRIT OF SECTION 48 OF THE LABOUR RELATIONS ACT AND FELL WITHIN THAT PART OF SECTION 48 WHICH RESERVES TO THE EMPLOYER THE FREEDOM "TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

WE ACCORDINGLY FIND THAT SINCE THE EMPLOYER DID NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE AND SINCE THE APPLICANT CLAIMED AS MEMBERS SOME OF THE PERSONS WHOSE SIGNATURES ON THE PETITION WERE OBTAINED AND WITNESSED BY THE EMPLOYEE WHO IDENTIFIED THE DOCUMENT AT THE HEARING, WE ARE PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT.

IN ALL THE CIRCUMSTANCES OF THIS CASE I FEEL NO WEIGHT SHOULD BE GIVEN TO THE PETITION. FIRST, I AM NOT FULLY INFORMED OF HOW THE PETITION WAS CIRCULATED.

WHILE THE PETITION HAS 20 SIGNATURES ON IT THE WITNESS COULD ONLY IDENTIFY 11 SIGNATURES, AND IN ADDITION THERE WAS ONE OTHER HE WAS NOT SURE OF. THIS LEAVES 8 OR 9 SIGNATURES UNIDENTIFIED AND THE BOARD HAS NO KNOWLEDGE WHO THE PERSON IS, WHO GOT THESE SIGNATURES, NOR DOES THE BOARD KNOW WHEN AND WHERE THEY WERE SIGNED.

THERE WAS ALSO EVIDENCE THAT THE COMPANY PRESIDENT CALLED A MEETING PRIOR TO THE APPLICATION BEING MADE, WHICH WAS HELD ON THE PREMISES IN THE CAFETERIA, ATTENDED BY ALL THE DAY WORKERS. THIS MEETING LASTED SOME 10 MINUTES AND AMONG SOME OF THE THINGS SAID WE FIND STATEMENT MADE BY THE PRESIDENT OF THE COMPANY. "HE HEARD A UNION WAS TRYING TO GET IN THE PLANT". "HE KNEW SOMETHINGS LACKING - DOING HIS BEST - BUILT A CAFETERIA - MADE PLANT LARGER - PURCHASED NEW MACHINERS" "WASN'T HIGHEST PAID COMPANY - BUT NOT LOWEST NEITHER" "FOR COMPANY TO GROW TOOK A GREAT DEAL OF CAPITAL" "WANTED EVERYONE TO FEEL PART OF THE COMPANY - WANTED EMPLOYEES TO GROW WITH COMPANY". TAKING ALL THESE QUOTATIONS INTO CONSIDERATION IT IS MY OPINION THE COMPANY HAD ONE AND ONLY ONE PURPOSE IN MIND -

"EMPLOYEES KEEP THE UNION OUT, I DON'T WANT ONE" WE CAN LOOK AFTER YOU WITHOUT A UNION.

THEREFORE I CAN COME TO NO OTHER CONCLUSION THE PETITION WAS INSPIRED BY MANAGEMENT AND TOGETHER WITH UNSATISFACTORY EVIDENCE OF THE CIRCULATION OF THE PETITION I WOULD HAVE DISALLOWED THE PETITION AND CERTIFIED OUTRIGHT."

9881-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT)  
V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (26 EMPLOYEES).

- AND -

9891-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON-  
WORKERS, LOCAL 736 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT)  
V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA,  
LOCAL 837 (INTERVENER). (8 EMPLOYEES).

THE BOARD ENDORSED THE RECORDS OF BOTH THE ABOVE APPLICATIONS AS FOLLOWS:-

"THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA APPLIED TO THE BOARD TO BE CERTIFIED FOR CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. IN A SEPARATE APPLICATION, THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON-WORKERS, LOCAL 736 ALSO APPLIED TO THE BOARD TO BE CERTIFIED FOR ALL RODMEN OF THE RESPONDENT WHO ARE EMPLOYED ON ALL WORK IN CONNECTION WITH FIELD FABRICATION, HANDLING, RACKING, SORTING, CUTTING, BENDING, HOISTING, PLACING, BURNING, WELDING AND TIEING OF ALL MATERIALS USED IN REINFORCED CONCRETE CONSTRUCTION, IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND. IN EACH CASE THE RESPONDENT, IN ITS REPLY, TOOK THE POSITION THAT THE APPLICATION SHOULD HAVE BEEN MADE TO THE CANADA LABOUR RELATIONS BOARD AND THAT THE ONTARIO LABOUR RELATIONS BOARD WAS WITHOUT JURISDICTION TO DEAL WITH THE CASE. WHEN THE MATTERS CAME ON FOR HEARING, THE TWO APPLICATIONS WERE JOINED IN SO FAR AS THE QUESTION OF JURISDICTION WAS CONCERNED.

AT THE HEARING THE PARTIES AGREED TO THE FOLLOWING FACTS:

THE RESPONDENT COMPANY HAS ENTERED INTO A CONTRACT WITH THE ST. LAWRENCE SEAWAY AUTHORITY TO EXECUTE THE FOLLOWING WORK:  
"MODIFICATIONS AND RECONSTRUCTION AT LOWER END OF EXISTING LOCK #2 - WELLAND CANAL TWINNING PROJECT". ATTACHED TO AND FORMING PART OF THE CONTRACT IS A DOCUMENT ENTITLED "LABOUR CONDITIONS" UNDER WHICH MINIMUM RATES AND MAXIMUM HOURS ARE ESTABLISHED BY THE FEDERAL MINISTER OF LABOUR. THESE CONDITIONS CONTAIN A LIMITED LICENCE FOR OVER-TIME WORK.

THE RESPONDENT FILED WITH THE BOARD AN UNSIGNED AND, IN SOME RESPECTS, AN INCOMPLETE COPY OF THE



CONTRACT BETWEEN THE RESPONDENT AND THE SEAWAY  
AUTHORITY.

THE RESPONDENT IS A GENERAL CONTRACTOR BUT AT THE DATE OF THE MAKING OF THE APPLICATION (JANUARY 19TH, 1965 IN THE CASE OF THE CARPENTERS AND JANUARY 21ST, 1965 IN THE CASE OF LOCAL 736), THE ONLY EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND WERE THOSE ENGAGED ON THE WELLAND CANAL PROJECT. SINCE THAT TIME, CARPENTER EMPLOYEES OF THE RESPONDENT HAVE BEEN EMPLOYED ON ORDINARY CONSTRUCTION PROJECTS IN THE THREE COUNTIES APART FROM THE WELLAND CANAL JOB AND SOME OF THE EMPLOYEES HAVE BEEN MOVED FROM THE CANAL PROJECT TO OTHER PROJECTS.

THE RESPONDENT RELIES ON SECTIONS 91(29) AND 92(10) OF THE BRITISH NORTH AMERICA ACT. BY SECTION 92(10) THE LEGISLATURES IN EACH PROVINCE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO:

10. LOCAL WORKS AND UNDERTAKINGS OTHER THAN SUCH AS ARE OF THE FOLLOWING CLASSES,-

A. LINES OF STEAM OR OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE;

THE MATTERS CONTAINED IN SECTION 92(10)A, BY VIRTUE OF SECTION 91(29), COME WITHIN THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA. THE RESPONDENT ARGUES THAT ALTHOUGH THE CANAL MAY NOT OF ITSELF CONNECT TWO PROVINCES AND DOES NOT EXTEND BEYOND THE LIMITS OF THE PROVINCE OF ONTARIO, NEVERTHELESS IT MUST BE REGARDED AS AN INTEGRAL PART OF A SYSTEM CONNECTING ONE PROVINCE, ONTARIO, WITH ANOTHER QUEBEC. THE RESPONDENT FURTHER CONTENDS THAT BY VIRTUE OF SECTION 10 OF THE ST. LAWRENCE SEAWAY AUTHORITY ACT, R.S.C. 1952 c. 242, TOGETHER WITH THE DECISION OF THIS BOARD IN ROBERTSON-YATES CORPORATION LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1962, P. 215, LABOUR RELATIONS WITH RESPECT TO SUCH A PROJECT OR UNDERTAKING LIE WITHIN THE JURISDICTION OF THE FEDERAL GOVERNMENT. AS PART OF HIS ARGUMENT COUNSEL ADOPTS THE OPINION AND REASONING OF THE AUTHOR OF AN ARTICLE ENTITLED "LEGISLATIVE JURISDICTION IN RAILWAY CONSTRUCTION" FOUND IN THE CANADIAN BAR JOURNAL, VOLUME 4, NOVEMBER, 1961 AT PAGE 458.

WHILE AT THE OUTSET COUNSEL STATED THAT HE WAS NOT RELYING ON THE FEDERAL POWER TO LEGISLATE OVER "NAVIGATION AND SHIPPING" (BRITISH NORTH AMERICA ACT, SECTION 91(10)), DURING THE COURSE OF HIS ARGUMENT HIS POSITION CHANGED AND HE ADOPTED THIS AS AN ALTERNATIVE ARGUMENT. THIS ARGUMENT WAS NOT DEVELOPED, HOWEVER, OTHER THAN TO REFER TO SECTIONS 2(b), 2(c) AND 10(b) OF THE ST. LAWRENCE SEAWAY AUTHORITY ACT. WE WERE REFERRED TO NO OTHER AUTHORITIES. NEITHER OF THE APPLICANTS IN THIS CASE WERE REPRESENTED BY COUNSEL AND WE THEREFORE DID NOT HAVE THE



BENEFIT OF LEGAL ARGUMENT IN OPPOSITION TO THE RESPONDENT'S POSITION.

IN THE ROBERTSON-YATES CORPORATION LIMITED CASE THE BOARD SAID IN PART AS FOLLOWS:

COUNSEL FOR THE RESPECTIVE PARTIES HAVE AGREED ON THE FACTS PERTINENT TO THE CONSTITUTIONAL ISSUE INVOLVED. IN SUBSTANCE, THESE ARE THAT THE RESPONDENT IS A GENERAL CONTRACTOR ENGAGED IN THE CONSTRUCTION, UNDER A CONTRACT WITH THE NIAGARA FALLS BRIDGE COMMISSION, OF CERTAIN STRUCTURES AT THE CANADIAN TERMINUS OF THE BRIDGE. THESE STRUCTURES CONSIST OF A TERMINAL AND APPROACHES, INCLUDING A PORT OF ENTRY INTO CANADA WITH CUSTOMS AND IMMIGRATION INSTALLATIONS, A CUSTOMS COMPOUND AND WAREHOUSE, TOLL LANES AND TOLL BOOTHS. IN OUR OPINION, THE RELATIONS BETWEEN THE RESPONDENT AND THE EMPLOYEES CONCERNED IN THIS APPLICATION, ON MATTERS COVERED BY THE LABOUR RELATIONS ACT, FALL OUTSIDE THE JURISDICTION OF THIS BOARD. SEE CAMPBELL BENNETT LTD. V. COMSTOCK MID WESTERN LTD. ET. AL., (1954) 3 D.L.R. 481; CANT V. CANADIAN BECHTEL LTD. (1957) 12 D.L.R. 2D 215. THIS PROCEEDING IS ACCORDINGLY TERMINATED.

AFTER CONSIDERING THE LEGISLATION AND AUTHORITIES REFERRED TO AND IN ADDITION THE FOLLOWING ACTS AND AUTHORITIES, NAMELY: BRITISH NORTH AMERICA ACT, SECTION 91(1A), BRITISH NORTH AMERICA ACT, 3RD SCHEDULE, READING NO. 1: JACQUES V. NICHOLL, (1866) 25 U.C.Q.B. 402; LASKIN, CANADIAN CONSTITUTIONAL LAW, 2 ED., P. 542 ET. SEQ.; C.P.R. COMPANY V. CORP. OF THE PARISH OF NOTRE DAME DE BONSECOUR (1899) A.C. 367; THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, R.S.C. 1952, C. 152, AND AS TO ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED (1955) S.C.R. P. 529; AND BACHMEIER DIAMOND AND PERCUSSION DRILLING CO. LTD. V. BEAVERLODGE DISTRICT OF MINE, MILL AND SMELTER WORKERS, LOCAL UNION NUMBER 912, (1962) 35 D.L.R. (2D) 241, WE ARE UNABLE TO DISTINGUISH IN PRINCIPLE THE PRESENT CASE FROM THAT OF THE PREVIOUS DECISION OF THIS BOARD IN ROBERTSON-YATES CORPORATION LIMITED. WE MUST THEREFORE FIND THAT WE ARE WITHOUT JURISDICTION TO DEAL WITH THE PRESENT APPLICATIONS. THE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

ALTHOUGH IT NOW APPEARS TO BE CLEAR THAT THE BOARD MUST DECIDE WHETHER TO ACCEPT OR REJECT JURISDICTION WHERE AN OBJECTION TO JURISDICTION IS RAISED (SEE REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX P. DUNN (1963) 2 O.R. 301, 39 D.L.R. (2D) 346, 63 C.L.L.C. ¶15, 484; RE ARMSTRONG TRANSPORT AND ONTARIO LABOUR RELATIONS BOARD, (1963) 42 D.L.R. (2D) 217, 64 C.L.L.C. ¶15, 492; BACHMEIER DIAMOND AND PERCUSSION DRILLING CO. LTD. CASE, SUPRA), IT IS MANIFESTLY CLEAR THAT THE BOARD CANNOT JUDICIALLY DETERMINE CONSTITUTIONAL QUESTIONS (REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX P. DUNN, SUPRA). IN OTHER WORDS, A DECISION BY THE BOARD IS MADE MERELY FOR THE PURPOSE OF ENABLING IT TO DETERMINE WHETHER TO PROCEED WITH THE APPLICATION. IT SEEMS TO US, THEREFORE, THAT WHEN ONE CONSIDERS THE SIZE AND DURATION OF THE WELLAND CANAL TWINNING PROJECT

THE NUMBER OF CONTRACTORS AND EMPLOYEES LIKELY TO BE INVOLVED, THE PROBLEMS THAT MAY BE ENCOUNTERED WITH ALREADY EXISTING COLLECTIVE AGREEMENTS AND THE FACT THAT MANY OTHER MATTERS ASIDE FROM APPLICATIONS FOR CERTIFICATION MAY BE AFFECTED, THE WHOLE QUESTION OF JURISDICTION IS ONE WHICH SHOULD BE JUDICIALLY DETERMINED IN THE COURTS AS SOON AS POSSIBLE. WE NOTE IN PASSING THAT, SO FAR AS WE ARE AWARE, THE PRECISE QUESTION INVOLVED IN THE PRESENT CASE HAS NOT BEEN PASSED ON BY THE COURTS. WE REFER, OF COURSE, TO THE CASE OF A GENERAL CONTRACTOR ENGAGED IN CONSTRUCTION ON A DOMINION UNDERTAKING.

AS INDICATED ABOVE, THESE PROCEEDINGS ARE HEREBY TERMINATED."

9943-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT)  
V. BATHURST CONTAINERS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

THERE WAS FILED WITH THE BOARD A COPY OF A COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2914. THE DURATION CLAUSE PROVIDES THAT THE COLLECTIVE AGREEMENT IS EFFECTIVE FROM MAY 1ST, 1964 TO APRIL 30TH, 1966. THE RECOGNITION CLAUSE OF THE AGREEMENT DOES NOT EXCLUDE FROM THE BARGAINING UNIT THE STATIONARY ENGINEERS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THERE IS, HOWEVER, NO CLASSIFICATION OR WAGE RATE IN THE SCHEDULE ATTACHED TO THE COLLECTIVE AGREEMENT FOR THE EMPLOYEES IN QUESTION. THE APPLICANT ARGUES THAT THIS IS A TIMELY APPLICATION AS THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION ARE NOT COVERED BY THE COLLECTIVE AGREEMENT.

THE EVIDENCE BEFORE THE BOARD IS THAT IN 1958 THE METHOD OF PAYMENT FOR THE STATIONARY ENGINEERS WAS CHANGED BY THE RESPONDENT FROM AN HOURLY TO A WEEKLY RATE. ALL SUBSEQUENT INCREASES IN WAGES FOR STATIONARY ENGINEERS HAS BEEN MADE UNILATERALLY BY THE RESPONDENT. THERE HAS BEEN NO BARGAINING BETWEEN THE PARTIES TO THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 2 WITH RESPECT TO THE WAGE RATE OR WORKING CONDITIONS OF STATIONARY ENGINEERS, AND NO GRIEVANCES HAVE BEEN PROCESSED UNDER THE TERMS OF EITHER THE CURRENT COLLECTIVE AGREEMENT OR PREVIOUS COLLECTIVE AGREEMENTS BETWEEN THE SAME PARTIES FOR THESE EMPLOYEES.

IN VIEW OF ALL THE ABOVE CIRCUMSTANCES, THE BOARD FINDS THAT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2914 HAS ABANDONED ITS BARGAINING RIGHTS WITH REGARD TO THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

INDEXED ENDORSEMENTS - PROSECUTION

0204-64-U: OSHAWA TYPOGRAPHICAL UNION LOCAL 969 (APPLICANT) V. ALGER PRESS LIMITED AND STEWART ALGER (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT STEWART ALGER FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

- (1) THAT BEING AN OFFICER OF THE RESPONDENT ALGER PRESS LIMITED, THE EMPLOYER, HE DID COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL LOCKOUT OF THE EMPLOYEES CONTRARY TO SECTION 56 OF THE LABOUR RELATIONS ACT;
- (2) THAT HE ALONG WITH THE RESPONDENT ALGER PRESS LIMITED REFUSED TO CONTINUE TO EMPLOY CERTAIN PERSONS AND DISCRIMINATED AGAINST THEM IN REGARD TO THEIR EMPLOYMENT BECAUSE THEY WERE MEMBERS OF THE APPLICANT TRADE UNION AND WERE EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 50 (A) OF THE LABOUR RELATIONS ACT;
- (3) THAT HE ALONG WITH THE RESPONDENT ALGER PRESS LIMITED LOCKED OUT CERTAIN EMPLOYEES OF ALGER PRESS LIMITED AT A TIME PRIOR TO THE LAPSE OF SEVEN DAYS FOLLOWING THE REPORT OF A CONCILIATION BOARD, CONTRARY TO SECTION 45(2) OF THE LABOUR RELATIONS ACT, OR, IN THE ALTERNATIVE, THAT HE ALONG WITH THE RESPONDENT ALGER PRESS LIMITED LOCKED OUT THE SAID EMPLOYEES AT A TIME WHEN A COLLECTIVE AGREEMENT WAS IN OPERATION, CONTRARY TO SECTION 54 (1) OF THE LABOUR RELATIONS ACT.

AT THE HEARING IN THIS MATTER, HELD ON JANUARY 5TH, 1965, EVIDENCE WAS PRESENTED AND ARGUMENT HEARD WITH RESPECT TO THE APPLICATION ONLY AS IT AFFECTS STEWART ALGER. THE APPLICATION AS IT AFFECTS ALGER PRESS LIMITED WAS DISPOSED OF IN THE BOARD'S ENDORSEMENT DATED DECEMBER 10TH, 1964.

IN THE INSTANT CASE THE EVIDENCE ESTABLISHES THE FOLLOWING FACTS:-

STEWART ALGER WAS AT ALL MATERIAL TIMES PRESIDENT AND GENERAL MANAGER OF ALGER PRESS LIMITED. THE APPLICANT TRADE UNION WAS CERTIFIED BARGAINING AGENT FOR THE COMPOSING ROOM EMPLOYEES OF ALGER PRESS LIMITED. THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COMPANY WHICH BY VIRTUE OF ITS PROVISIONS CONTINUED IN EFFECT BEYOND WHAT WOULD OTHERWISE HAVE BEEN ITS EXPIRY DATE AND WAS IN EFFECT AT THE MATERIAL TIMES. CONCILIATION SERVICES HAD BEEN GRANTED THE APPLICANT TRADE UNION AND A CONCILIATION BOARD HAD BEEN CONSTITUTED BUT HAD NOT YET MET AT ANY OF THE MATERIAL TIMES. ON AUGUST 7TH, 1964, THE RESPONDENT STEWART ALGER ADDRESSED A MEETING OF THE COMPOSING ROOM STAFF AT WHICH TIME HE READ TO THEM A LETTER (EXHIBIT 3), DATED AUGUST 6TH, 1964, A COPY OF WHICH WAS SENT TO THE EMPLOYEES CONCERNED, IN WHICH HE STATED THAT COMPOSING ROOM OPERATIONS OF THE RESPONDENT COMPANY WOULD CEASE. THE LETTER STATED THAT IT WAS NO LONGER ECONOMICALLY FEASIBLE TO CONTINUE TO OPERATE THE COMPOSING DEPARTMENT IN VIEW OF VOLUME, INCREASING COSTS AND COMPETITIVE POSITION. TERMINATION OF EMPLOYMENT OF COMPOSING ROOM STAFF WAS EFFECTED ON AUGUST 7TH, 1964. DURING THE WEEKS FOLLOWING AUGUST 7TH CERTAIN WORK WAS PERFORMED IN THE COMPOSING DEPARTMENT. IT WOULD APPEAR THAT THIS WORK WAS COMPOSING

ROOM WORK AND THAT IT WAS PERFORMED BY MEMBERS OF THE MANAGEMENT OF THE RESPONDENT COMPANY. THE EVIDENCE DOES NOT SUPPORT ANY FINDING AS TO THE VOLUME OF SUCH WORK. ON OCTOBER 16TH, 1964, THE COMPANY BY ITS PRESIDENT, THE RESPONDENT STEWART ALGER, WROTE TO THE APPLICANT TRADE UNION ADVISING IT THAT IT WOULD BE REOPENING ITS COMPOSING ROOM OPERATIONS ON A LIMITED BASIS AND REQUESTING THE UNION TO ADVISE FORMER EMPLOYEES QUALIFIED FOR THE POSITIONS AVAILABLE TO REPORT FOR WORK.

THESE ARE ALL THE FACTS WHICH THE BOARD FINDS TO BE ESTABLISHED AND RELEVANT TO THE QUESTIONS IN ISSUE.

ON THESE FACTS IT DOES NOT APPEAR THAT A PRIMA FACIE CASE HAS BEEN MADE OUT WITH RESPECT TOTTHE ALLEGATIONS MADE AGAINST THE RESPONDENT STEWART ALGER. "LOCKOUT" IS DEFINED IN SECTION 1 (1) (g) OF THE LABOUR RELATIONS ACT AS FOLLOWS:-

"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES.

IN THE AMALGAMATED ELECTRIC CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1963, P. 403, THE BOARD MAKING REFERENCE TO THIS PROVISION STATED "IT IS NOT SUFFICIENT TO SHOW MERELY THAT THERE HAS BEEN A CLOSING OF A PLACE OF EMPLOYMENT OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES WITHOUT MORE. IT MUST BE ESTABLISHED IN ADDITION THAT THE EMPLOYER ACTED 'WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES' TO REFRAIN FROM EXERCISING CERTAIN RIGHTS OR PRIVILEGES UNDER THE ACT". IN THE INSTANT CASE CAN IT BE SAID THAT THE FACTS AS FOUND LED SUPPORT TO THE CONCLUSION THAT THE REFUSAL BY THE RESPONDENT COMPANY TO CONTINUE TO EMPLOY CERTAIN OF ITS EMPLOYEES WAS DONE WITH A VIEW TO COMPEL OR INDUCE THEM TO REFRAIN FROM EXERCISING ANY OF THEIR RIGHTS OR PRIVILEGES UNDER THE ACT? IN OUR OPINION IT CANNOT. THERE IS NO EVIDENCE AS TO THE NATURE OF ANY BARGAINING WHICH HAD TAKEN PLACE WHICH WOULD SUGGEST THAT THERE WAS IN FACT ANY ISSUE WITH RESPECT TO WHICH THE EMPLOYEES WERE LOCKED OUT. THERE IS NO EVIDENCE TO SUGGEST THAT, HAD THE EMPLOYEES AGREED TO CERTAIN PROPOSALS OR AGREED TO FOREGO CERTAIN CLAIMS, THEIR JOBS WOULD HAVE REMAINED OPEN. THERE WAS NO EVIDENCE PRESENTED AT THE HEARING OF THE INSTANT CASE OF ANYTHING THAT COULD PROPERLY BE CALLED COMPUSSION OR INDUCEMENT. FOR THESE REASONS THE BOARD REFUSES TO GRANT ITS CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT STEWART ALGER FOR ANY ALLEGED VIOLATION OF SECTION 56 OR OF SECTION 54 (1) OF THE ACT. SINCE, AS THE BOARD HAS FOUND, THERE WAS A COLLECTIVE AGREEMENT IN EFFECT AT THE MATERIAL TIMES, THE PROVISIONS OF SECTION 54 (2) OF THE ACT DO NOT APPLY.



THERE IS NO EVIDENCE THAT THE RESPONDENT STEWART ALGER DISCRIMINATED AGAINST ANY PERSON BECAUSE OF HIS UNION MEMBERSHIP OR BECAUSE HE WAS EXERCISING ANY OTHER RIGHTS UNDER THE ACT. THE BOARD THEREFORE REFUSES TO GRANT CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED VIOLATION OF SECTION 50 OF THE ACT.

THE APPLICANT IS DISMISSED."

9805-64-U: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351, (FORMERLY KNOWN AS THE CLEANERS, DYERS, AND LAUNDRY WORKERS UNION. LOCAL 351, A.F. OF L.) (APPLICANT) V. GARDEN CITY LAUNDRY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON OR ABOUT NOVEMBER 23RD, 1964, CERTAIN EMPLOYEES OF THE RESPONDENT (INCLUDING TWO UNION STEWARDS), WHO REPRESENTED THEMSELVES AS BEING AUTHORIZED BY THE APPLICANT UNION TO ACT ON ITS BEHALF, PURPORTED TO MAKE THE UNION A PARTY WITH THE RESPONDENT IN A JOINT APPLICATION (BOARD FILE NO. 9704-64-M) TO THIS BOARD UNDER SECTION 39 (3) OF THE LABOUR RELATIONS ACT FOR EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNION. THIS APPLICATION UNDER SECTION 39 (3) CAME ON FOR HEARING AND ON JANUARY 11TH, 1965, WAS DISMISSED BY THE BOARD ON THE GROUNDS THAT THE PERSONS WHO PURPORTED TO BRING THE APPLICATION ON ITS BEHALF WERE NOT ACTING WITH THE AUTHORITY OF THE UNION. IT IS ALLEGED IN THE INSTANT APPLICATION THAT THE RESPONDENT'S CONDUCT IN DEALING WITH THE EMPLOYEES FOR THE PURPOSE OF AND THEN BRINGING THE APPLICATION UNDER SECTION 39 (3) CONSTITUTES A VIOLATION BY THE RESPONDENT OF SECTION 51 OF THE ACT. IN THIS RESPECT, IT IS ALLEGED THAT CONTRARY TO SECTION 51 THE RESPONDENT MUST BE TAKEN TO HAVE BARGAINED WITH PERSONS OTHER THAN THOSE REPRESENTING THE UNION WHICH IS THE PARTY TO THE AGREEMENT.

THE EVIDENCE ADDUCED IN THE INSTANT CASE RELATING TO THE EVENTS BEHIND THE APPLICATION UNDER SECTION 39 (3), DISCLOSES THAT THE EMPLOYEES WERE DISSATISFIED WITH A CERTAIN CLAUSE IN THE COLLECTIVE AGREEMENT AND WANTED TO OBTAIN ITS REMOVAL. THE REASON GIVEN IN THE EVIDENCE FOR THE BRINGING OF THE APPLICATION TO OBTAIN EARLY TERMINATION OF THE AGREEMENT WAS THAT SUCH AN APPLICATION WAS CONSIDERED NECESSARY IN ORDER TO GET RID OF THIS CLAUSE SO THAT THE UNION COULD MAKE A NEW AGREEMENT WITH THE RESPONDENT WITHOUT THE CLAUSE.

IT IS CLEAR THAT WHATEVER MISCONCEPTIONS THE RESPONDENT HAD AS TO THE AUTHORITY OF THE EMPLOYEES IN QUESTION TO ACT ON BEHALF OF THE UNION, THE PLAIN FACT OF THE MATTER IS THAT THE RESPONDENT ONLY PURPORTED TO DEAL WITH AND FOR PURPOSES OF THE APPLICATION UNDER SECTION 39 (3) COULD ONLY MAKE THE JOINT APPLICATION WITH THE UNION WHICH WAS THE OTHER PARTY TO THE SUBSISTING COLLECTIVE AGREEMENT. MOREOVER, THE UNCONTROVERTED EVIDENCE IS THAT IT WAS THE PURPOSE OF THE JOINT "APPLICANTS" TO GET RID OF THE PRESENT AGREEMENT SO THAT A NEW ONE WITHOUT THE CLAUSE COULD BE MADE BETWEEN THE UNION AND THE RESPONDENT.

THERE IS NO DOUBT ON THE EVIDENCE THAT THE EMPLOYEES IN QUESTION, AS A RESULT OF ADVICE RECEIVED BY THEM FROM MR. MONSON, A SOLICITOR WHO ACTED IN THE MATTER FOR THEM AS WELL AS FOR THE RESPONDENT, BONA FIDE BELIEVED

THEY AND THE OTHER MEMBERS OF THE UNION IN THE BARGAINING UNIT AT THE RESPONDENT'S PLANT HAD FULL AUTHORITY FOR THE PURPOSE TO ACT ON BEHALF OF THE UNION. MOREOVER, THERE IS NOTHING IN THE EVIDENCE TO WARRANT A FINDING OF ANY PRIMA FACIE CASE THAT THE RESPONDENT, WHO, WE MUST INFER, WAS ALSO ACTING ON THE ADVICE OF ITS SOLICITOR IN THE MATTER, MR. MONSON, DID NOT ALSO BONA FIDE BELIEVE THAT THESE SAME EMPLOYEES WERE FULLY AUTHORIZED TO REPRESENT THE UNION. WHETHER THE ADVICE WHICH THE PARTIES RECEIVED FROM THEIR COMMON SOLICITOR WAS, IN THE CIRCUMSTANCES, WISE IS NOT A MATTER FOR OUR CONCERN.

EVEN ASSUMING, HOWEVER, THAT THE APPLICATION UNDER SECTION 39(3) WAS, AS SUGGESTED BY THE APPLICANT, A SCHEME OR SUBTERFUGE ON THE PART OF THE RESPONDENT DESIGNED TO TRICK AND CIRCUMVENT THE UNION BY OBTAINING EARLY TERMINATION OF THE AGREEMENT IN ORDER TO PLACE THE RESPONDENT IN A POSITION TO NEGOTIATE A NEW AGREEMENT WITH THE UNION WITHOUT THE CLAUSE IN QUESTION, WE ARE UNABLE TO COMPREHEND HOW THIS WOULD COME WITHIN THE SUBJECT-MATTER GOVERNED BY SECTION 51 OF THE ACT.

THE APPLICATION IS DISMISSED."

9812-64-U: McPHERSON WAREHOUSING COMPANY LIMITED (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"IT IS CONTENDED BY THE APPLICANT EMPLOYER THAT CERTAIN CLAUSES PROPOSED BY THE UNION FOR INCLUSION AS TERMS IN A RENEWED COLLECTIVE AGREEMENT BETWEEN THEM MUST BE INTERPRETED AS SEEKING TO AMEND OR TO DEROGATE FROM OBLIGATIONS IMPOSED BY THE LABOUR RELATIONS ACT. THE APPLICATION ARGUES, THAT THE CLAUSES ARE, THEREFOR, "ILLEGAL", AND THAT IN PROPOSING THEM THE UNION IS GUILTY OF A FAILURE TO BARGAIN IN GOOD FAITH CONTRARY TO SECTION 12 OF THE ACT.

THE EVIDENCE WHICH WAS SUBMITTED IN THE FORM OF AN AGREED STATEMENT OF FACT DOES NOT, IN OUR VIEW, PROVIDE ANY BASIS WHATEVER FOR A FINDING THAT THE APPLICANT, PRIOR TO THIS APPLICATION, TOOK ANY OBJECTION TO OR MADE ANY EFFORT TO HAVE THE MATTER OF THE DISPUTED CLAUSES DEALT WITH AND CONSIDERED IN BARGAINING ON THE GROUNDS NOW RAISED, NAMELY, THAT IT BELIEVES THEM TO BE "ILLEGAL". MOREOVER, THERE IS NOTHING IN THE EVIDENCE TO INDICATE THAT THE UNION, EITHER WITH OR WITHOUT KNOWLEDGE OF THE APPLICANT'S OBJECTIONS, HAS DISPLAYED ANY FIXED OR UNCOMPROMISING INSISTENCE THAT THE APPLICANT CAPITULATE TO THESE CLAUSES IN THEIR PRESENT OR IN ANY OTHER FORM AS A CONDITION OF BARGAINING ON OTHER SUBJECTS OR AS PREREQUISITE TO THE SIGNING OF A COLLECTIVE AGREEMENT.

HAVING REGARD TO THE NATURE OF THE CLAUSES IN QUESTION, IT SEEMS TO US THAT IF THE APPLICANT IS IN DOUBT AS TO THEIR LEGALITY IT IS, IN THE CIRCUMSTANCES, INCUMBENT UPON IT, BEFORE COMING TO THIS BOARD FOR CONSENT TO PROSECUTE THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH, TO MAKE SOME REASONABLE EFFORT TO SETTLE THE MATTER IN COLLECTIVE BARGAINING. IT IS ONLY AFTER THE MATTER HAS BEEN DEALT WITH IN BARGAINING THAT THIS BOARD WILL BE IN A POSITION TO SCRUTINIZE THE CONDUCT OF THE PARTIES TO DETERMINE WHETHER THERE HAS BEEN BARGAINING IN GOOD FAITH

AND TO DECIDE WHETHER THERE IS A PRIMA FACIE CASE TO SUPPORT THE GRANTING OF ITS CONSENT TO A PROSECUTION FOR FAILURE TO DO SO. IN OUR OPINION, APART FROM ANY OTHER CONSIDERATION AND WITHOUT EXPRESSING ANY OPINION ON THE OTHER ASPECTS OF THE CASE, THE IMMEDIATE FLAW IN THE PRESENT APPLICATION, ON THE EVIDENCE BEFORE US, IS ITS MANIFEST PREMATURITY.

WE DO NOT ACCEDE TO THE PROPOSITION OF COUNSEL FOR THE APPLICANT THAT THE MERE INSISTENCE BY THE UNION THAT THE CLAUSES IN QUESTION IN THEIR PRESENT FORM REMAIN ON THE BARGAINING TABLE AS SUBJECTS OF COLLECTIVE BARGAINING CONSTITUTES WITHOUT MORE, IN THE CIRCUMSTANCES OF THIS CASE, PRIMA FACIE EVIDENCE OF AN ARGUABLE QUESTION OF LAW THAT THERE HAS BEEN A FAILURE ON THE PART OF THE UNION TO BARGAIN IN GOOD FAITH CONTRARY TO SECTION 12.

THE APPLICATION IS DISMISSED."

INDEXED ENDORSEMENT - SECTION 47A

9735-64-M: THE OSHAWA WHOLESALE LIMITED (APPLICANT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 (APPLICANT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

ON NOVEMBER 9TH, 1964 BASSIN'S FOOD MARKETS LIMITED (HEREINAFTER REFERRED TO AS BASSIN'S) SOLD THE WHOLE OF ITS BUSINESS TO THE APPLICANT THE OSHAWA WHOLESALE LIMITED (HEREINAFTER REFERRED TO AS OSHAWA WHOLESALE). OSHAWA WHOLESALE, ON THE SAME DATE, CONCLUDED ARRANGEMENTS TO HIRE AS ITS EMPLOYEES THE PERSONS FORMERLY EMPLOYED BY BASSIN'S.

THE BUSINESS OF BASSIN'S WHICH WAS ACQUIRED BY OSHAWA WHOLESALE CONSISTED OF SEVEN RETAIL GROCERY STORES IN METROPOLITAN TORONTO AND ONE RETAIL GROCERY STORE AT AJAX. PRIOR TO THE ACQUISITION OF THE BASSIN'S STORES, OSHAWA WHOLESALE ALREADY OWNED A TOTAL OF TWENTY-TWO RETAIL GROCERY STORES IN ONTARIO. FOUR OF THESE STORES ARE LOCATED IN METROPOLITAN TORONTO AND AN ADDITIONAL THREE OF ITS STORES ARE LOCATED IN AN AREA IMMEDIATELY ADJACENT TO METROPOLITAN TORONTO. THE LATTER THREE STORES ARE CLOSER TO METROPOLITAN TORONTO THAN THE FORMER BASSIN'S STORE LOCATED IN AJAX.

THE EVIDENCE OF NORMAN PENTECOST, THE VICE-PRESIDENT OF PERSONNEL AND PUBLIC RELATIONS OF OSHAWA WHOLESALE IS THAT SINCE THE DATE OF THE ACQUISITION OF THE BASSIN'S STORES BY THE APPLICANT, THERE HAS BEEN ONLY TWO TRANSFERS OF EMPLOYEES FROM OSHAWA WHOLESALE STORES TO THE FORMER BASSIN'S STORES IN THE METROPOLITAN TORONTO AND ADJACENT AREA. PENTECOST TESTIFIED, HOWEVER, THAT OSHAWA WHOLESALE PLANNED ADDITIONAL TRANSFERS OF PERSONNEL TO THE NEWLY ACQUIRED BASSIN'S STORES.

THE RESPONDENT, RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206, ACQUIRED THE BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF THE FORMER BASSIN'S STORES BY A CERTIFICATE OF THE BOARD DATED SEPTEMBER 4TH, 1962, ENCOMPASSING ALL OF THE BASSIN'S STORES IN METROPOLITAN TORONTO. BY A



SEPARATE CERTIFICATE OF THE BOARD DATED AUGUST 21ST, 1962, THE RESPONDENT ACQUIRED THE BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES ENCOMPASSING THE FORMER BASSIN'S STORES AT AJAX. SUBSEQUENT TO THE ISSUANCE OF THE ABOVE CERTIFICATES BASSIN'S AND THE RESPONDENT UNION ENTERED INTO A COLLECTIVE AGREEMENT ON MAY 1ST, 1963 BY WHICH BASSIN'S RECOGNIZED THE RESPONDENT "AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES OF THE COMPANY AT ITS STORES IN AJAX AND METROPOLITAN TORONTO, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD". THE LIKE EMPLOYEES IN THE OTHER OSHAWA WHOLESALE STORES IN METROPOLITAN TORONTO AND THE IMMEDIATELY ADJACENT AREA ARE NOT REPRESENTED BY A BARGAINING AGENT.

IT IS IMPLICIT IN SUBSECTION (2) OF SECTION 47A OF THE LABOUR RELATIONS ACT THAT THE INTENTION OF THE WHOLE SECTION IS TO PRESERVE THE BARGAINING RIGHTS OF A TRADE UNION IN THE EVENT OF THE SALE OF A BUSINESS TO A PERSON WHO BECOMES THE EMPLOYER OF THE EMPLOYEES IN THE BARGAINING UNIT. MORE PARTICULARLY, SUBSECTION (2), IN PART, PROVIDES THAT WHERE AN EMPLOYER, WHO IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION SELLS HIS BUSINESS, THE TRADE UNION CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS. THE BOARD, HOWEVER, IS GIVEN DISCRETIONARY POWERS BY OTHER SUBSECTIONS OF SECTION 47A TO DEAL WITH SPECIAL CIRCUMSTANCES THAT MAY ARISE. THUS SUBSECTION (5) OF SECTION 47A GIVES TO THE BOARD DISCRETIONARY AUTHORITY TO AMEND, ALTER OR EVEN TERMINATE THE BARGAINING RIGHTS OF A TRADE UNION WHEN A BUSINESS IS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES.

IN THE INSTANT CASE, THERE IS SOME EVIDENCE OF INTERMINGLING OF THE EMPLOYEES OF THE OSHAWA WHOLESALE STORES AND THE EMPLOYEES OF THE FORMER BASSIN'S STORES. THE AMOUNT OF INTERMINGLING TO DATE, HOWEVER, HAS BEEN SO SLIGHT THAT WE ARE OF THE OPINION THAT THIS IS NOT A SITUATION IN WHICH THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SUBSECTION (5) SHOULD ALTER OR AMEND THE EXISTING BARGAINING RIGHTS OF THE RESPONDENT.

THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT IS THE BARGAINING AGENT FOR THOSE EMPLOYEES OF OSHAWA WHOLESALE IN THE LIKE BARGAINING UNIT WHICH THE BOARD FINDS TO BE ALL EMPLOYEES OF OSHAWA WHOLESALE AT ITS RETAIL STORES IN THE FOLLOWING LOCATIONS,

BROWN'S LINE  
182 BROWN'S LINE, TORONTO 14

QUEEN  
567 QUEEN ST. W., TORONTO 2B

EAST MALL  
15 WEST DEANE DR., ETOBICOKE

WESTOWN  
235 DIXON RD., ISLINGTON



KENNEDY  
KENNEDY RD. & SHROPSHIRE AVE.  
SCARBOROUGH

JANE  
405 JANE ST., TORONTO 9

LAWRENCE  
2875 LAWRENCE AVE. E. SCARBORO

AJAX  
120 HARWOOD AVE. S., AJAX

SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

WE WOULD POINT OUT THAT DIFFERENT CONSIDERATIONS ARE TAKEN INTO ACCOUNT BY THE BOARD IN DETERMINING BARGAINING UNITS IN APPLICATIONS MADE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT AND IN APPLICATIONS FOR CERTIFICATION. FOR EXAMPLE, IN AN APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF RETAIL FOOD STORES, IT IS THE PRACTICE OF THE BOARD TO INCLUDE THE EMPLOYEES IN ALL OF THE STORES OF THE PARTICULAR OWNER IN A MUNICIPALITY IN THE BARGAINING UNIT. IN THE INSTANT CASE, IF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 HAD NOT ALREADY ACQUIRED BARGAINING RIGHTS FOR SOME OF THE EMPLOYEES OF OSHAWA WHOLESALE, THE BOARD WOULD HAVE NO DIFFICULTY IN FINDING THAT THE APPROPRIATE BARGAINING UNIT WOULD INCLUDE ALL OF THE STORES OF OSHAWA WHOLESALE IN METROPOLITAN TORONTO. THE PRACTICES OF THE BOARD IN CERTIFICATION APPLICATIONS WITH RESPECT TO THE APPROPRIATENESS OF BARGAINING UNITS, HOWEVER, MAY BE CIRCUMSCRIBED IN AN APPLICATION UNDER SECTION 47A, SINCE THE SECTION PROVIDES, EXCEPT IN SPECIAL CIRCUMSTANCES, THAT A TRADE UNION CONTINUES TO HOLD ITS BARGAINING RIGHTS IN THE LIKE BARGAINING UNIT. IN OTHER WORDS, IN APPLYING SECTION 47A, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE.

BOARD MEMBER M. C. HAY DISSENTED AND SAID:-

I DISSENT.

THIS IS AN APPLICATION UNDER SECTION 47A (5) FOR A DECLARATION THAT THE RESPONDENT TRADE UNION IS NOT THE BARGAINING AGENT OF ANY OF THE EMPLOYEES OF THE APPLICANT COMPANY.

SECTION 47A (5) PROVIDES AS FOLLOWS:

"WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED,

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;

- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT."

WITH RESPECT TO THE INTERMINGLING OF EMPLOYEES THE APPLICANT COMPANY ADDUCED THE FOLLOWING EVIDENCE AND MADE THE FOLLOWING ARGUMENT.

(1) DURING THE 5 WEEK PERIOD FROM THE DATE OF ACQUISITION OF THE BASSIN FOOD MARKET STORES BY OSHAWA WHOLESALE TO THE DATE OF THE HEARING OF THIS APPLICATION, OSHAWA WHOLESALE HAD EFFECTED ONLY TWO TRANSFERS FROM ITS STORES IN METROPOLITAN TORONTO TO THE NEWLY ACQUIRED BASSIN STORES.

(2) THE REASON STATED FOR THE SMALL NUMBER OF TRANSFERS WAS THAT, HAVING REGARD TO THE FACT THAT THE BOARD HAD NOT HERETOFORE BEEN CALLED UPON TO INTERPRET SECTION 47A (5), IT WAS UNCERTAIN AS TO WHAT BARGAINING UNIT THE BOARD MIGHT FIND TO BE APPROPRIATE AND HOW SUCH DETERMINATION WOULD AFFECT THE RIGHTS OF THE COMPANY, THE TRADE UNION WHICH REPRESENTED CERTAIN EMPLOYEES IN THE FORMER BASSIN STORES AND THE EMPLOYEES IN BOTH THE UNIONIZED AND NON-UNIONIZED STORES. ACCORDINGLY IT BROUGHT THE INSTANT APPLICATION.

(3) IN ORDER TO PROFITABLY OPERATE THE BASSINS STORES IT WAS BOTH DESIRABLE AND ESSENTIAL THAT THE TWO GROUPS OF STORES BE INTEGRATED SO AS TO EFFECT THE ECONOMIES OF UNIFORMITY OF ADMINISTRATION, ACCOUNTING METHODS, OPERATING PROCEDURE, MARKETING PRACTICES AND COST CONTROL. IN SUPPORT OF THIS CONTENTION A COMPARISON OF A FOUR WEEK PERIOD OF THE OPERATION OF THE FORMER BASSIN STORES AND THE OSHAWA WHOLESALE STORES IN METROPOLITAN TORONTO WAS OFFERED IN EVIDENCE, WHICH COMPARISON ESTABLISHED THAT (A) PRODUCTIVITY OF EMPLOYEES IN THE FORMER BASSIN STORES ON A NON-INTEGRATED BASIS WAS SUBSTANTIALLY LOWER THAN IN OSHAWA WHOLESALE STORES. THE AVERAGE PERCENTAGE OF WAGES TO SALES IN THE BASSIN STORES WAS 35% HIGHER THAN IN THE OSHAWA WHOLESALE STORES DESPITE THE FACT THAT IN THE BASSIN STORES THE EMPLOYEES WORKED 10% LONGER, THEIR WAGES WERE LOWER AND THEIR BENEFIT PROGRAMS LESS GENEROUS. (B) GROSS PROFITS IN THE MEAT AND PRODUCE DEPARTMENTS IN THE BASSIN STORES WERE 18% AND 24% LOWER RESPECTIVELY THAN IN THE CORRESPONDING DEPARTMENTS OF ITS OSHAWA WHOLESALE STORES.

(4) IN ORDER TO INTEGRATE THE STORES THE TRANSFER OF EMPLOYEES BETWEEN STORES IS ESSENTIAL TO IMPLEMENT NEW PROCEDURES AND TRAIN EMPLOYEES IN NEW OPERATING METHODS AND MARKETING TECHNIQUES.

(5) INTERMINGLING OF ITS EMPLOYEES THROUGH PERMANENT TRANSFERS BETWEEN ITS STORES WAS A COMMON AND CONSTANTLY OCCURRING PHENOMENON. FROM JANUARY 1ST TO NOVEMBER 5TH, 1964, THE COMPANY HAD EFFECTED 40 SUCH PERMANENT TRANSFERS BETWEEN ITS 4 METROPOLITAN TORONTO STORES AND IN ADDITION HAD MADE A CONSIDERABLE NUMBER OF TEMPORARY TRANSFERS TO FACILITATE VACATION RELIEF.

(6) THE PROBLEMS INHERENT IN TRANSFERRING EMPLOYEES BETWEEN THE TWO GROUPS OF STORES, HAVING REGARD FOR THE LOWER AND LESS GENEROUS WAGE RATES, BENEFITS AND WORKING CONDITIONS AND THE LONGER HOURS APPLICABLE IN THE UNIONIZED BASSIN STORES, COUPLED WITH THE FACT OF TRANSFERRING EMPLOYEES WHO HAD EXPRESSED A DESIRE FOR TRADE UNION REPRESENTATION OUTSIDE OF THEIR BARGAINING UNIT AND TRANSFERRING EMPLOYEES WHO HAD EXPRESSED NO DESIRE FOR TRADE UNION REPRESENTATION INSIDE A BARGAINING UNIT, IS PATENTLY OBVIOUS. THAT WERE IT NOT FOR SUCH PROBLEMS IT WOULD TRANSFER BETWEEN 20 AND 25 EMPLOYEES FROM ITS OSHAWA WHOLESALE STORES TO THE FORMER BASSIN STORES TO EFFECT THEIR INTEGRATION FOR THE REASONS OUTLINED ABOVE. THE TOTALITY OF THIS EVIDENCE TO MY MIND CLEARLY ESTABLISHES THE PRACTICE OF THE COMPANY TO INTERMINGLE ITS EMPLOYEES, THE NEED FOR A SUBSTANTIAL AMOUNT OF INTERMINGLING OF EMPLOYEES BETWEEN THE TWO GROUPS OF STORES IN THE CIRCUMSTANCES OF THE INSTANT CASE, AS WELL AS PROVIDING RATIONAL AND COMPELLING REASONS AS TO WHY IT HAS DELAYED SUCH TRANSFER OF EMPLOYEES PENDING A DECISION OF THE BOARD ON A MATTER UPON WHICH THE BOARD HAS NOT HERETOFORE BEEN CALLED UPON TO ISSUE ITS DETERMINATION.

ACCORDINGLY, TO FIND AS THE MAJORITY DOES THAT - "THE AMOUNT OF INTERMINGLING TO DATE, HOWEVER, HAS BEEN SO SLIGHT THAT WE ARE OF THE OPINION THAT THIS IS NOT A SITUATION IN WHICH THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SUBSECTION (5) SHOULD ALTER OR AMEND THE EXISTING BARGAINING RIGHTS OF THE RESPONDENT" - IS IN MY RESPECTFUL OPINION TO BEG THE ISSUE.

ADDITIONALLY, THE DECISION OF THE MAJORITY HEREIN FAILS TO FOLLOW THE LONG AND WELL ESTABLISHED PRACTICE OF THE BOARD IN ITS ESTABLISHMENT OF THE APPROPRIATE BARGAINING UNIT IN RETAIL FOOD STORES.

IT IS OF SIGNIFICANCE THAT WHEREAS SECTION 47A (2) SPEAKS OF THE BARGAINING RIGHTS OF A TRADE UNION CONTINUING UNTIL THE BOARD OTHERWISE DIRECTS "IN THE LIKE BARGAINING UNIT", SUBSECTION (5) PROVIDES THAT WHERE INTERMINGLING IS A FACTOR THE BOARD'S DETERMINATION RELATES TO AN "APPROPRIATE" AND NOT A "LIKE" BARGAINING UNIT.

IN THE RECENT DECISION OF THE BOARD IN THE GOODYEAR SERVICE STORES CASE, BOARD FILE NO. 9478-64-R THE BOARD NOT ONLY CONFIRMED ITS LONG ESTABLISHED PRACTICE WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT IN RETAIL FOOD STORES BUT EXTENDED IT TO ENCOMPASS RETAIL SALES AND SERVICE STORES GENERALLY. IN SO DOING THE BOARD SAID IN PART:

"THERE ARE, HOWEVER, CERTAIN TYPES OF CASES WHERE THE BOARD HAS, AS A MATTER OF POLICY, GRANTED CERTIFICATION IN RESPECT OF ALL EMPLOYEES IN A GEOGRAPHICAL AREA WHERE THE EMPLOYER OPERATES AT MORE THAN ONE LOCATION. IN PARTICULAR, THIS IS SO IN THE CASES OF RETAIL FOOD MARKETS, VARIETY CHAIN STORES AND BREWERS' WAREHOUSING STORES. IT IS OUR VIEW THAT THE POLICY EXPRESSED IN THESE CASES OUGHT TO BE APPLIED IN CASES OF THE TYPE NOW BEFORE US. IN OUR OPINION, WHERE AN EMPLOYER CONDUCTS ESSENTIALLY

SIMILAR RETAIL OR SERVICE STORE OPERATIONS AT A NUMBER OF LOCATIONS IN A GIVEN GEOGRAPHICAL AREA IT WOULD NOT, GENERALLY SPEAKING, BE CONDUCTIVE TO SOUND COLLECTIVE BARGAINING FOR A SERIES OF BARGAINING UNITS TO BE ESTABLISHED IN RESPECT OF GROUPS OF EMPLOYEES PERFORMING SIMILAR TASKS AND HAVING SIMILAR BARGAINING INTERESTS. SUCH A SITUATION WHERE SOME EMPLOYEES MIGHT BE REPRESENTED BY ONE TRADE UNION, OTHERS BY ANOTHER AND OTHERS NOT AT ALL WOULD BE INVIDIOUS FROM THE EMPLOYER AND TRADE UNION POINTS OF VIEW AS WELL AS FROM THE POINTS OF VIEW OF MOST INDIVIDUAL EMPLOYEES.

THE BOARD, THEREFORE, CONSIDERS THAT THE POLICY IT HAS FOLLOWED IN CASES OF RETAIL, FOOD MARKETS, VARIETY CHAIN STORES AND BREWERS' WAREHOUSING STORES, AND WHICH HAS FREQUENTLY BEEN APPLIED IN OTHER CASES INVOLVING RETAIL OR SERVICE STORES, SHOULD BE ADOPTED AS ITS GENERAL POLICY IN CASES OF RETAIL OR SERVICE STORES WHERE THE INTERESTS OF EMPLOYEES THROUGHOUT A GROUP OF STORES CAN BE SAID TO BE ESSENTIALLY SIMILAR AS IN THE PRESENT CASE."

THE SAME REASONING APPLIES WITH EQUAL FORCE IN THE INSTANT CASE, THERE IS NOTHING IN EITHER THE LEGISLATION OR THE FACTS HEREIN THAT SHOULD, IN MY OPINION, CAUSE THE MAJORITY TO DEViate FROM THE LONG ESTABLISHED POLICY OF THE BOARD OF ESTABLISHING ONE UNIT AS APPROPRIATE FOR COLLECTIVE BARGAINING. BY DIVIDING SUCH SINGLE APPROPRIATE BARGAINING UNIT INTO TWO UNITS ON THE BASIS ONLY THAT THERE IS UNION ORGANIZATION OF A PART OF IT IS NEITHER DIRECTED BY THE LEGISLATION NOR IS IT CONDUCTIVE TO SOUND COLLECTIVE BARGAINING.

IN VIEW OF THE DECISION OF THE MAJORITY HEREIN IT IS UNNECESSARY TO CONSIDER THE PROCEDURE WHEREBY THE RIGHT OF THE TRADE UNION TO REPRESENT EMPLOYEES IN WHAT I CONSIDER TO BE THE APPROPRIATE BARGAINING UNIT SHOULD BE DETERMINED."

#### INDEXED ENDORSEMENT - SECTION 79A

9896-64-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION) v. GILBERT FOLEY (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

AT THE HEARING IN THIS MATTER, COUNSEL APPEARING ON BEHALF OF THE EMPLOYER ADMITTED THAT THE EMPLOYER HAD PURCHASED THE BUSINESS IN QUESTION, WITH RESPECT TO WHOSE EMPLOYEES THE TRADE UNION HELD BARGAINING RIGHTS. IT WAS NOT CONTENDED THAT THE PROVISIONS OF SECTION 47A OF THE ACT WERE INAPPLICABLE. RATHER, COUNSEL FOR THE RESPONDENT CONTENDED THAT THE NOTICE



GIVEN UNDER SECTION 47A DID NOT ENTITLE THE TRADE UNION TO APPLY FOR THE APPOINTMENT OF A CONCILIATION OFFICER PURSUANT TO SECTION 13 OF THE ACT.

SECTION 13 OF THE ACT CAN ONLY BE INVOKED "WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR 40" AND IN THE INSTANT CASE NOTICE WAS GIVEN UNDER SECTION 47A. BY THE PROVISIONS OF SECTION 47A, HOWEVER, NOTICE GIVEN PURSUANT TO THAT SECTION "HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11". THERE IS NO DOUBT THAT A NOTICE UNDER SECTION 47A HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11 FOR THE PURPOSE OF INVOKING CONCILIATION SERVICES PURSUANT TO SECTION 13.

ON THE QUESTION REFERRED TO THE BOARD, THE BOARD FINDS THAT THE TRADE UNION IS ENTITLED TO GIVE NOTICE TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT. THE BOARD FURTHER NOTES THAT SUCH NOTICE HAS THE SAME EFFECT AS NOTICE UNDER SECTION 11 OF THE ACT AND THAT THE GIVING OF SUCH NOTICE ENTITLED THE TRADE UNION TO REQUEST THE APPOINTMENT OF A CONCILIATION OFFICER PURSUANT TO SECTION 13 OF THE ACT."

#### ADDENDUM

THE FOLLOWING APPLICATION WAS INADVERTENTLY OMITTED FROM THE JANUARY 1965 MONTHLY REPORT.

8619-64-U: THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS LOCAL 231 (APPLICANT) v. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L.-C.I.O. (ADDED AS A PARTY BY DIRECTION OF THE BOARD).

ON OCTOBER 28, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR REFUSING, CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT, TO BARGAIN IN GOOD FAITH.

AT THE COMMENCEMENT OF THE HEARING IN THIS CASE, COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THE APPLICANT, A LOCAL OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, WAS NOT THE BARGAINING AGENT OF THE EMPLOYEES OF THE RESPONDENT AND THAT, SINCE IT WAS A STRANGER TO THE RELATIONS BETWEEN THE EMPLOYER AND ITS EMPLOYEES, IT WAS NOT ENTITLED TO MAKE AN APPLICATION FOR LEAVE TO PROSECUTE THE RESPONDENT FOR REFUSAL TO BARGAIN WITH IT. ALTHOUGH INITIALLY COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THE BOARD HAD NO JURISDICTION TO ENTERTAIN AN APPLICATION MADE BY THE LOCAL UNION, HE SUBSEQUENTLY ALTERED HIS POSITION AND SUBMITTED THAT, SINCE IT WAS CONTRARY TO THE PAST PRACTICE OF THE BOARD TO ENTERTAIN AN APPLICATION OF THIS NATURE BY A "STRANGER", THE BOARD SHOULD, AS A FIRST STEP IN THE PROCEEDING, DETERMINE WHETHER IT WAS THE LOCAL UNION OR THE INTERNATIONAL UNION THAT HELD BARGAINING RIGHTS FOR THE EMPLOYEES. COUNSEL FOR THE APPLICANT UNION, THE LOCAL, CONCURRED IN THIS REQUEST. THE PROCEEDINGS WERE THEREUPON ADJOURNED TO PERMIT

NOTICE OF THE APPLICATION TO BE GIVEN TO THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS WHOSE INTERESTS MIGHT BE AFFECTED BY ANY DECISION WHICH THE BOARD MIGHT REACH ON THIS ISSUE. THE BOARD THEREUPON DIRECTED THAT THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS BE ADDED AS A PARTY TO THE PROCEEDINGS AND THAT IT BE SERVED WITH COPIES OF THE APPROPRIATE DOCUMENTS. NOTICE OF THIS DIRECTION WAS DULY GIVEN TO THE INTERNATIONAL UNION AND IT WAS AFFORDED FULL OPPORTUNITY TO PARTICIPATE IN THE PROCEEDINGS.

IN ORDER TO APPRECIATE THE SIGNIFICANCE OF THE EVENTS THAT LED UP TO THE INSTANT APPLICATION, IT IS NECESSARY TO GO BACK TO THE LATTER PART OF 1951. ON SEPTEMBER 17, 1951, THIS BOARD CERTIFIED THE NATIONAL BROTHERHOOD OF OPERATIVE POTTERS, LOCAL 231, AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF STANDARD SANITARY & DOMINION RADIATOR LIMITED. THE APPLICANT HAS STATED, AND THE RESPONDENT DOES NOT DENY, THAT THE NATIONAL BROTHERHOOD OF OPERATIVE POTTERS, LOCAL 231, SUBSEQUENTLY ALTERED ITS NAME TO INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS LOCAL 231, AND IT IS COMMON GROUND BETWEEN THE PARTIES THAT STANDARD SANITARY & DOMINION RADIATOR LIMITED BECAME AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED. COLLECTIVE AGREEMENTS WERE ENTERED INTO BETWEEN THE COMPANY AND THE LOCAL UNION, THE AGREEMENT DATED OCTOBER 17, 1956 DESCRIBING THE PARTIES AS

- (A) THE LANSLOWNE PLANT, POTTERY DIVISION, AMERICAN-STANDARD PRODUCTS (CANADA) LTD., 800 LANSLOWNE AVENUE WITH HEAD OFFICE AT 1201 DUPONT STREET, TORONTO, HEREINAFTER CALLED "THE COMPANY"
- (B) THOSE EMPLOYEES OF THE LANSLOWNE PLANT, AMERICAN-STANDARD PRODUCTS (CANADA) LTD., POTTERY DIVISION, INCLUDED IN THE DEFINITION OF EMPLOYEES IN ARTICLE 1 HEREOF AND
- (C) LOCAL UNION NO. 231 OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR ON ITS OWN BEHALF. THE UNION HAS NEGOTIATED WITH THE EMPLOYER ON ITS OWN BEHALF AND ON BEHALF OF THE EMPLOYEES AS THE COLLECTIVE BARGAINING REPRESENTATIVE OF THE EMPLOYEES.

THE TERM "UNION" WAS DEFINED IN ARTICLE 1(C) OF THE AGREEMENT AS FOLLOWS:

THE TERM "UNION" SHALL MEAN LOCAL 231 OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR.

THE AGREEMENT JUST REFERRED TO BECAME EFFECTIVE ON THE DATE OF SIGNING AND WAS TO CONTINUE IN EFFECT UNTIL OCTOBER 1, 1958.

NEGOTIATIONS FOR THE RENEWAL OF THIS AGREEMENT WERE PROTRACTED. WHEN THE NEW AGREEMENT WAS ULTIMATELY EXECUTED ON OCTOBER 9, 1959, THE PARTIES WERE DESCRIBED THEREIN AS:

AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED SOLELY  
WITH RESPECT TO ITS LANSDOWNE PLANT, 800 LANSDOWNE  
AVENUE, TORONTO, ONTARIO, HEREINAFTER CALLED  
"THE COMPANY"

- AND -

THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS,  
A.F. OF L.-C.I.O. ON BEHALF OF LOCAL 231, HEREINAFTER  
CALLED "THE UNION".

THE "COMPANY" RECOGNIZED "THE UNION" AS THE SOLE AND EXCLUSIVE COLLECTIVE BARGAINING AGENT FOR THE "EMPLOYEES", BUT THIS AGREEMENT DID NOT CONTAIN ANY DEFINITION SECTION, SUCH AS APPEARED IN THE PREVIOUS AGREEMENT, WHICH SPECIFICALLY DEFINED THE TERM "UNION". THE SIGNATURES TO THE AGREEMENT ON BEHALF OF "THE UNION" WERE THOSE OF SIX PERSONS, FIVE OF WHOM WERE MEMBERS OF THE LOCAL UNION AND THE SIXTH WAS WALTER E. CLAWGES, WHO IS THE FIRST VICE-PRESIDENT OF THE INTERNATIONAL UNION. THE SIGNATURE OF CLAWGES IS FOLLOWED BY THE DESIGNATION "DISTRICT REPRESENTATIVE".

T. W. GUSCOTT, A MEMBER OF THE LOCAL UNION, WHO WAS A SIGNATORY TO THE 1959 AGREEMENT FOR THE UNION AND WHO WAS CALLED AS A WITNESS BY COUNSEL FOR THE APPLICANT, TESTIFIED THAT HE WAS NOT AWARE, AT THE TIME THE 1959 AGREEMENT WAS EXECUTED, OF THE CHANGED DESCRIPTION OF THE PARTIES TO THE AGREEMENT; IN FACT, HE STATED AT ONE POINT THAT HE DID NOT KNOW OF THE CHANGE UNTIL SOME TIME IN 1962. HOWEVER, WE ARE SATISFIED ON THE EVIDENCE BEFORE US THAT GUSCOTT AS WELL AS THE OTHER MEMBERS OF THE BARGAINING COMMITTEE AND CLAWGES WERE COGNIZANT OF THE WORDING WHICH IDENTIFIED THE PARTIES TO THE 1959 AGREEMENT, ALTHOUGH IT MAY WELL BE THAT THEY DID NOT APPRECIATE UNTIL SOME TIME AFTER THE AGREEMENT WAS EXECUTED THAT THE ALTERATION MIGHT HAVE ANY SIGNIFICANCE. THERE IS A CONFLICT OF TESTIMONY AS TO JUST HOW THE NEW WORDING CAME TO BE PUT INTO THE 1959 AGREEMENT. GUSCOTT TESTIFIED THAT THE WORDING "HAD NOT BEEN NEGOTIATED IN MY TIME". CLAWGES INFORMED US THAT THE CHANGE IN "THE HEADING" HAD NOT BEEN THE SUBJECT OF NEGOTIATIONS AND AGAIN THAT, IN THE COURSE OF THE NEGOTIATIONS LEADING UP TO THE 1959 AGREEMENT, NO PROPOSITION HAD BEEN PUT FORWARD TO "CHANGE THE WORDING AS TO THE RESPONSIBILITY OF THE PARTIES". ON THE OTHER HAND, H.D. JANNEY, THE DIRECTOR OF INDUSTRIAL RELATIONS FOR THE COMPANY, TESTIFIED THAT THE WORDING WITH WHICH WE ARE HERE CONCERNED, EXCEPT FOR THE LETTERS AFL-CIO, WAS PROPOSED BY THE COMPANY AT AN EARLIER STAGE OF THE NEGOTIATIONS - IN ALL PROBABILITY AT THE SECOND NEGOTIATING MEETING - THAT THE UNION COMMITTEE SUGGESTED THE ADDITION OF THE LETTERS AFL-CIO AND THAT, WHEN THE COMPANY ACQUIESCED, THE PARTIES "O.K.'D" THE DESCRIPTION. HOWEVER THAT MAY BE, IT WOULD APPEAR THAT THERE WAS NO LENGTHY DISCUSSION OF THE COMPANY'S PROPOSAL. THREE PERSONS CALLED AS WITNESSES ON BEHALF OF THE APPLICANT - A. MURRAY, PRESENTLY CHAIRMAN OF THE LOCAL UNION NEGOTIATING COMMITTEE, WHO HAD BEEN AN ACTIVE MEMBER OF THE UNION SINCE 1951 AND HAD ATTENDED THE MEMBERSHIP MEETINGS OF THE LOCAL UNION AT WHICH REPORTS WERE MADE AS TO THE PROGRESS OF THE NEGOTIATIONS; GUSCOTT,



PRESENTLY PRESIDENT, CHIEF STEWARD, AND MEMBER OF THE NEGOTIATING COMMITTEE OF THE LOCAL UNION, WHO HAD BEEN A MEMBER OF THE NEGOTIATING COMMITTEE FOR THE 1959 AGREEMENT; AND CLAWGES - ALL STATED EMPHATICALLY THAT THE LOCAL UNION HAD NEVER AGREED TO TRANSFER OR ASSIGN TO THE INTERNATIONAL UNION THE BARGAINING RIGHTS THE LOCAL UNION HAD WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT COMPANY. ON THE EVIDENCE BEFORE US IT IS CLEAR THAT, AT NO TIME DURING THE NEGOTIATIONS BETWEEN THE PARTIES PROCEEDING THE EXECUTION OF THE 1959 AGREEMENT DID THE COMPANY INDICATE TO THE LOCAL UNION THAT, IN PROPOSING THE AMENDED WORDING, IT DESIRED TO HAVE THE INTERNATIONAL UNION SUBSTITUTED FOR THE LOCAL UNION AS THE BARGAINING AGENT. IT IS EQUALLY CLEAR THAT, IN AGREEING TO THE AMENDED WORDING, THE UNION NEGOTIATORS DID NOT HAVE IT IN CONTEMPLATION THAT THE WORDS WOULD HAVE THE EFFECT SUBSEQUENTLY ATTRIBUTED TO THEM BY THE RESPONDENT COMPANY.

COUNSEL FOR THE RESPONDENT COMPANY CONTENDS THAT, BY AGREEING TO THE INCORPORATION IN THE 1959 AGREEMENT OF THE WORDS HERE UNDER CONSIDERATION, THE LOCAL UNION IN EFFECT FORFEITED ITS BARGAINING RIGHTS. IN OUR OPINION, SUCH A RESULT COULD BE BROUGHT ABOUT ONLY IF THERE WAS SUBSTANTIAL EVIDENCE SHOWING THAT THAT WAS THE ACTUAL INTENT OF THE PARTIES OR BY CLEAR AND UNEQUIVOCAL WORDS IN THE AGREEMENT ITSELF. NOTHING OF THE SORT IS TO BE FOUND HERE. WHAT APPEARS TO HAVE OCCURRED IS THAT THE RESPONDENT COMPANY SOUGHT TO MODERNIZE THE FORM OF THE AGREEMENT AND PROPOSED THAT THE REFERENCE IN THE PREVIOUS AGREEMENTS TO THE EMPLOYEES AS A PARTY TO THE AGREEMENT BE ELIMINATED (SINCE, AS JANNEY CONCEDED AT THE HEARING, SUCH A REFERENCE WAS "OUT-DATED") AND, IN ADDITION, THAT THE INTERNATIONAL UNION SHOULD IN SOME WAY BE MADE PRIVY TO THE AGREEMENT. THE LATTER OBJECTIVE WAS ACCOMPLISHED, WITH THE CONCURRENCE OF THE LOCAL UNION, BY THE INTERNATIONAL UNION BEING NAMED AS THE AGENT OF THE LOCAL UNION IN THE NEGOTIATION AND EXECUTION OF THE AGREEMENT. HOWEVER, BOTH FROM THE HISTORY OF BARGAINING BETWEEN THE SEVERAL ENTITIES AS WELL AS ON THE PLAIN AND UNEQUIVOCAL WORDING OF THE AGREEMENT ITSELF, IT IS EVIDENT THAT THE LOCAL UNION REMAINED THROUGHOUT THE PRINCIPAL AND THE BARGAINING AGENT FOR THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT. THIS CONCLUSION IS SUPPORTED BY THE FACT THAT, THROUGHOUT THE AGREEMENT, THE OBLIGATIONS UNDERTAKEN AND THE RIGHTS TO BE EXERCISED BY "THE UNION" ARE OBLIGATIONS AND RIGHTS THAT ARE TO BE CARRIED OUT OR EXERCISED, AND WERE INDEED CARRIED OUT AND EXERCISED ACCORDING TO THE EVIDENCE BEFORE US, BY THE LOCAL UNION, RATHER THAN BY THE INTERNATIONAL UNION. WHERE THE INTERESTS OF THE INTERNATIONAL UNION ARE AFFECTED, THE AGREEMENT REFERS TO THE INTERNATIONAL UNION IN EXPRESS TERMS. SEE ARTICLE XIV, CLAUSE 14.04, AND ATTACHMENT "A" TO THE AGREEMENT - THE WAGE ASSIGNMENT AND DUES OBLIGATION FORM - WHICH STIPULATES THAT IT IS THE "MONTHLY DUES AND INITIATION FEES CURRENTLY IN EFFECT ACCORDING TO THE CONSTITUTION OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS..." THAT ARE TO BE DEDUCTED.

HAS ANYTHING OCCURRED SUBSEQUENT TO THE EVENTS SET OUT ABOVE WHICH ALTERS THIS STATE OF AFFAIRS? IN THE COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO ON JANUARY 24, 1962, FOLLOWING THE EXPIRATION OF THE 1959 AGREEMENT, THE PARTIES ARE DESCRIBED IN THE SAME TERMS AS IN THE LAST-MENTIONED AGREEMENT. THE 1962 AGREEMENT IS, IN ALL RESPECTS ESSENTIAL TO THIS CASE, IDENTICAL WITH THE 1959 AGREEMENT. IT WAS SOME TIME SUBSEQUENT TO THE EXECUTION OF THE 1962 AGREEMENT THAT THE QUESTION FIRST AROSE AS TO WHETHER IT WAS THE LOCAL UNION OR THE INTERNATIONAL



UNION THAT HELD THE BARGAINING RIGHTS. THE LOCAL UNION HAD ASKED THE COMPANY TO INCREASE THE AMOUNT OF DUES WHICH IT WAS DEDUCTING FROM THE WAGES OF EMPLOYEES PURSUANT TO THE PROVISIONS OF THE AGREEMENT. THE REQUEST APPEARS TO HAVE BEEN MADE IN WRITING. THE COMPANY REPLIED ORALLY THAT IT WOULD NOT COMPLY WITH THE REQUEST. THE RECOLLECTION OF MURRAY, THE CHAIRMAN OF THE LOCAL UNION NEGOTIATING COMMITTEE, AS TO THE REASON GIVEN BY THE COMPANY WAS THAT, IN ITS VIEW, THE AGREEMENT WAS WITH THE INTERNATIONAL UNION RATHER THAN WITH THE LOCAL UNION. THE INCREASE WAS ULTIMATELY GRANTED AFTER THE LOCAL UNION WROTE TO THE INTERNATIONAL UNION AND THE INTERNATIONAL UNION COMMUNICATED WITH THE COMPANY. NONE OF THIS CORRESPONDENCE WAS PRODUCED TO US NOR WERE WE TOLD PRECISELY WHAT WAS SAID IN THE SEVERAL LETTERS THAT WERE EXCHANGED. WE ARE NOT PREPARED TO FIND ON THE EVIDENCE BEFORE US THAT THE LOCAL UNION CAN BE TAKEN, FROM THIS INCIDENT, TO HAVE ACQUIESCED IN THE COMPANY'S POSITION. IN OUR OPINION, NOTHING THAT OCCURRED ON THIS OCCASION CAN BE TAKEN AS BEING DETERMINATIVE OF THE ISSUE OF BARGAINING RIGHTS. THUS, DURING THE PERIOD WHEN THE 1962 AGREEMENT WAS IN EFFECT, IT IS OUR CONCLUSION THAT THE BARGAINING RIGHTS FOR THE EMPLOYEES BOUND BY THE AGREEMENT WERE VESTED IN THE LOCAL UNION AND THAT IT WAS THE LOCAL UNION WHICH WAS ENTITLED TO GIVE NOTICE TO, AND TO BARGAIN WITH, THE RESPONDENT COMPANY FOR THE RENEWAL OF THAT AGREEMENT OR FOR THE MAKING OF A NEW AGREEMENT.

THESE BARGAINING RIGHTS WOULD CONTINUE IN EFFECT UNLESS AND UNTIL (A) THE BOARD CERTIFIED ANOTHER UNION TO REPRESENT THE EMPLOYEES OR ISSUED A DECLARATION IN AN APPROPRIATE PROCEEDING THAT THE BARGAINING RIGHTS OF THE LOCAL UNION WERE TERMINATED (SEE SECTIONS 40, 43 AND 45 OF THE LABOUR RELATIONS ACT); OR (B) THEY WERE ABANDONED BY THE LOCAL UNION; OR (C) ANOTHER UNION SUCCEEDED TO THE BARGAINING RIGHTS OF THE LOCAL UNION BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION (SEE SECTION 47 OF THE ACT). SINCE NO OTHER UNION HAS BEEN CERTIFIED AND NO DECLARATION HAS BEEN MADE BY THE BOARD THAT THE LOCAL UNION NO LONGER REPRESENTS THE EMPLOYEES, THE QUESTION WE HAVE TO CONSIDER IS WHETHER, SINCE THE EXPIRATION OF THE 1962 AGREEMENT, THERE HAS BEEN AN ABANDONMENT OR A SUCCESSION.

NOTICE OF DESIRE TO NEGOTIATE A NEW AGREEMENT WAS GIVEN TO THE COMPANY ON MAY 24, 1963, IN THE FORM OF A LETTER IN THE NAME OF THE LOCAL UNION. NONE OF THE SIGNATURES ON THIS LETTER IS THAT OF AN OFFICER OR OFFICIAL OF THE INTERNATIONAL UNION. AN ACKNOWLEDGMENT OF THIS LETTER WAS SENT BY JANNEY ON MAY 27, 1963 AND IS ADDRESSED TO "MR. D. MCKNIGHT, PRESIDENT LOCAL 231, INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS". THERE IS NO SUGGESTION IN THIS LETTER THAT THE NOTICE SHOULD HAVE BEEN GIVEN BY THE INTERNATIONAL UNION. A FURTHER LETTER ABOUT THE NEGOTIATIONS WAS SENT TO THE COMPANY ON JULY 2, 1963, BY MURRAY, CHAIRMAN OF THE "NEGOTIATIONS COMMITTEE" OF THE LOCAL UNION, AND THE COMPANY'S ACKNOWLEDGMENT OF THIS LETTER, OVER THE SIGNATURE OF JANNEY, IS ADDRESSED TO MURRAY, CHAIRMAN OF THE NEGOTIATING COMMITTEE OF THE LOCAL UNION. THIS LETTER INDICATES AT THE FOOT THEREOF THAT A COPY OF IT WAS SENT TO CLAWGES. IN SHORT, NO QUESTION WAS RAISED BY THE COMPANY AT THIS STAGE AS TO THE ADEQUACY OR PROPRIETY OF NOTICE UNDER THE AGREEMENT BEING GIVEN BY THE LOCAL UNION. WE HAVE NO EVIDENCE BEFORE US TO SHOW WHETHER ANY OFFICER OR OFFICIAL OF THE INTERNATIONAL UNION SAID IN ON THE NEGOTIATIONS PRIOR TO THE POINT OF TIME AT WHICH A CONCILIATION BOARD WAS ESTABLISHED. THEREAFTER, AT THE FIRST MEETING OF THE CONCILIATION BOARD, D. R. BYERS, FOR THE COMPANY, DREW THE ATTENTION OF THE BOARD TO THE FACT THAT NO REPRESENTATIVE FROM THE INTERNATIONAL UNION WAS PRESENT. MURRAY COMMUNICATED WITH CLAWGES AND INFORMED THE BOARD THAT HE WAS AUTHORIZED TO ACT ON BEHALF OF THE INTERNATIONAL UNION.

CONTRACT BETWEEN THE RESPONDENT AND THE SEAWAY  
AUTHORITY.

THE RESPONDENT IS A GENERAL CONTRACTOR BUT AT THE DATE OF THE MAKING OF THE APPLICATION (JANUARY 19TH, 1965 IN THE CASE OF THE CARPENTERS AND JANUARY 21ST, 1965 IN THE CASE OF LOCAL 736), THE ONLY EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND WERE THOSE ENGAGED ON THE WELLAND CANAL PROJECT. SINCE THAT TIME, CARPENTER EMPLOYEES OF THE RESPONDENT HAVE BEEN EMPLOYED ON ORDINARY CONSTRUCTION PROJECTS IN THE THREE COUNTIES APART FROM THE WELLAND CANAL JOB AND SOME OF THE EMPLOYEES HAVE BEEN MOVED FROM THE CANAL PROJECT TO OTHER PROJECTS.

THE RESPONDENT RELIES ON SECTIONS 91(29) AND 92(10) OF THE BRITISH NORTH AMERICA ACT. BY SECTION 92(10) THE LEGISLATURES IN EACH PROVINCE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO:

10. LOCAL WORKS AND UNDERTAKINGS OTHER THAN SUCH AS ARE OF THE FOLLOWING CLASSES,-

A. LINES OF STEAM OR OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE;

THE MATTERS CONTAINED IN SECTION 92(10)A, BY VIRTUE OF SECTION 91(29), COME WITHIN THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA. THE RESPONDENT ARGUES THAT ALTHOUGH THE CANAL MAY NOT OF ITSELF CONNECT TWO PROVINCES AND DOES NOT EXTEND BEYOND THE LIMITS OF THE PROVINCE OF ONTARIO, NEVERTHELESS IT MUST BE REGARDED AS AN INTEGRAL PART OF A SYSTEM CONNECTING ONE PROVINCE, ONTARIO, WITH ANOTHER QUEBEC. THE RESPONDENT FURTHER CONTENDS THAT BY VIRTUE OF SECTION 10 OF THE ST. LAWRENCE SEAWAY AUTHORITY ACT, R.S.C. 1952 C. 242, TOGETHER WITH THE DECISION OF THIS BOARD IN ROBERTSON-YATES CORPORATION LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1962, P. 215, LABOUR RELATIONS WITH RESPECT TO SUCH A PROJECT OR UNDERTAKING LIE WITHIN THE JURISDICTION OF THE FEDERAL GOVERNMENT. AS PART OF HIS ARGUMENT COUNSEL ADOPTS THE OPINION AND REASONING OF THE AUTHOR OF AN ARTICLE ENTITLED "LEGISLATIVE JURISDICTION IN RAILWAY CONSTRUCTION" FOUND IN THE CANADIAN BAR JOURNAL, VOLUME 4, NOVEMBER, 1961 AT PAGE 458.

WHILE AT THE OUTSET COUNSEL STATED THAT HE WAS NOT RELYING ON THE FEDERAL POWER TO LEGISLATE OVER "NAVIGATION AND SHIPPING" (BRITISH NORTH AMERICA ACT, SECTION 91(10)), DURING THE COURSE OF HIS ARGUMENT HIS POSITION CHANGED AND HE ADOPTED THIS AS AN ALTERNATIVE ARGUMENT. THIS ARGUMENT WAS NOT DEVELOPED, HOWEVER, OTHER THAN TO REFER TO SECTIONS 2(b), 2(c) AND 10(b) OF THE ST. LAWRENCE SEAWAY AUTHORITY ACT. WE WERE REFERRED TO NO OTHER AUTHORITIES. NEITHER OF THE APPLICANTS IN THIS CASE WERE REPRESENTED BY COUNSEL AND WE THEREFORE DID NOT HAVE THE

BENEFIT OF LEGAL ARGUMENT IN OPPOSITION TO THE RESPONDENT'S POSITION.

IN THE ROBERTSON-YATES CORPORATION LIMITED CASE THE BOARD SAID IN PART AS FOLLOWS:

COUNSEL FOR THE RESPECTIVE PARTIES HAVE AGREED ON THE FACTS PERTINENT TO THE CONSTITUTIONAL ISSUE INVOLVED. IN SUBSTANCE, THESE ARE THAT THE RESPONDENT IS A GENERAL CONTRACTOR ENGAGED IN THE CONSTRUCTION, UNDER A CONTRACT WITH THE NIAGARA FALLS BRIDGE COMMISSION, OF CERTAIN STRUCTURES AT THE CANADIAN TERMINUS OF THE BRIDGE. THESE STRUCTURES CONSIST OF A TERMINAL AND APPROACHES, INCLUDING A PORT OF ENTRY INTO CANADA WITH CUSTOMS AND IMMIGRATION INSTALLATIONS, A CUSTOMS COMPOUND AND WAREHOUSE, TOLL LANES AND TOLL BOOTHS. IN OUR OPINION, THE RELATIONS BETWEEN THE RESPONDENT AND THE EMPLOYEES CONCERNED IN THIS APPLICATION, ON MATTERS COVERED BY THE LABOUR RELATIONS ACT, FALL OUTSIDE THE JURISDICTION OF THIS BOARD. SEE CAMPBELL BENNETT LTD. V. COMSTOCK MID WESTERN LTD. ET. AL., (1954) 3 D.L.R. 481; CANT V. CANADIAN BECHTEL LTD. (1957) 12 D.L.R. 2D 215. THIS PROCEEDING IS ACCORDINGLY TERMINATED.

AFTER CONSIDERING THE LEGISLATION AND AUTHORITIES REFERRED TO AND IN ADDITION THE FOLLOWING ACTS AND AUTHORITIES, NAMELY: BRITISH NORTH AMERICA ACT, SECTION 91(1A), BRITISH NORTH AMERICA ACT, 3RD SCHEDULE, HEADING NO. 1; JACQUES V. NICHOLL, (1866) 25 U.C.Q.B. 402; LASKIN, CANADIAN CONSTITUTIONAL LAW, 2 ED., P. 542 ET. SEQ.; C.P.R. COMPANY V. CORP. OF THE PARISH OF NOTRE DAME DE BONSECOUR (1899) A.C. 367; THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, R.S.C. 1952, C. 152, AND AS TO ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED (1955) S.C.R. P. 529; AND BACHMEIER DIAMOND AND PERCUSSION DRILLING CO. LTD. V. BEAVERLODGE DISTRICT OF MINE, MILL AND SMELTER WORKERS, LOCAL UNION NUMBER 913, (1962) 35 C.L.R. (2D) 241, WE ARE UNABLE TO DISTINGUISH IN PRINCIPLE THE PRESENT CASE FROM THAT OF THE PREVIOUS DECISION OF THIS BOARD IN ROBERTSON-YATES CORPORATION LIMITED. WE MUST THEREFORE FIND THAT WE ARE WITHOUT JURISDICTION TO DEAL WITH THE PRESENT APPLICATIONS. THE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

ALTHOUGH IT NOW APPEARS TO BE CLEAR THAT THE BOARD MUST DECIDE WHETHER TO ACCEPT OR REJECT JURISDICTION WHERE AN OBJECTION TO JURISDICTION IS RAISED (SEE REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX P. DUNN (1963) 2 O.R. 301, 39 D.L.R. (2D) 346, 63 C.L.L.C. ¶15, 484; RE BRISTOL TRANSPORT AND ONTARIO LABOUR RELATIONS BOARD, (1963) 42 D.L.R. (2D) 217, 64 C.L.L.C. ¶15, 492; BACHMEIER DIAMOND AND PERCUSSION DRILLING CO. LTD. CASE, SUPRA), IT IS MANIFESTLY CLEAR THAT THE BOARD CANNOT JUDICIALLY DETERMINE CONSTITUTIONAL QUESTIONS (REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX P. DUNN, SUPRA). IN OTHER WORDS, A DECISION BY THIS BOARD IS MADE MERELY FOR THE PURPOSE OF ENABLING IT TO DETERMINE WHETHER TO PROCEED WITH THE APPLICATION. IT SEEMS TO US, THEREFORE, THAT WHEN ONE CONSIDERS THE SIZE AND DURATION OF THE WELLAND CANAL TWINNING PROJECT



IN THE INSTANT CASE, WHO ARE THE PARTIES TO THE COLLECTIVE AGREEMENT IN QUESTION?

THE COLLECTIVE AGREEMENT IS IN THE FOLLOWING STYLE

BETWEEN: AMERICAN-STANDARD PRODUCTS (CANADA)  
LIMITED SOLELY WITH RESPECT TO ITS  
LANSDOWNE PLANT, 800 LANSDOWNE AVENUE,  
TORONTO, ONTARIO, HEREINAFTER CALLED  
"THE COMPANY",

AND

THE INTERNATIONAL BROTHERHOOD OF  
OPERATIVE POTTERS, A.F. OF L. - C.I.O.,  
ON BEHALF OF LOCAL 231, HEREINAFTER  
CALLED "THE UNION".

THERE IS NO QUESTION THAT THE PARTY OF THE FIRST PART IS AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED, THE RESPONDENT COMPANY IN THE INSTANT CASE. THE COMPANY NAME IS TYPED IN CAPITAL LETTERS AS COMPARED TO SMALL LETTERING IN THE DESCRIPTIVE OR QUALIFYING WORDING WHICH FOLLOWS.

THE NAME OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L. - C.I.O., IS ALSO IN CAPITAL LETTERS AND THE EXPLANATORY WORDING WHICH FOLLOWS IS IN SMALL TYPE. IF THE LOCAL UNION WAS TO BE CONSIDERED AS THE PARTY TO THE AGREEMENT, THEN IT WOULD BE REASONABLE TO EXPECT THAT THE WORDS "LOCAL 231" WOULD HAVE ALSO BEEN TYPED IN CAPITAL LETTERS AND WOULD READ "THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L., C.I.O. LOCAL 231" (HEREINAFTER CALLED "THE UNION"). ON THE OTHER HAND, IF BOTH THE LOCAL UNION AND THE INTERNATIONAL UNION WERE TO BE PARTIES IN A TRIPARTITE AGREEMENT, IT WOULD HAVE READ THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L., C.I.O. AND ITS LOCAL 231.

REGARDLESS OF WHETHER THE INTERNATIONAL UNION OR THE LOCAL UNION IS THE BARGAINING AGENT, IN CLEAR AND UNAMBIGUOUS WORDING THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F.L.-C.I.O., IS THE PARTY OF THE SECOND PART TO THIS COLLECTIVE AGREEMENT. ANY REQUIREMENT UNDER THE ACT UPON THE RESPONDENT COMPANY TO BARGAIN IN RESPECT OF THE RENEWAL OF THE SAID COLLECTIVE AGREEMENT, THEREFORE, IS WITH THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L. - C.I.O. WHICH IS THE SOLE PARTY OF THE SECOND PART THEREOF.

IT IS A WELL ESTABLISHED PRINCIPLE THAT WHEN A TRANSACTION HAS BEEN REDUCED TO, OR RECORDED IN WRITING, EITHER BY REQUIREMENT OF LAW OR AGREEMENT OF THE PARTIES, EXTRINSIC EVIDENCE IS, IN GENERAL, INADMISSIBLE TO CONTRADICT, VARY, ADD TO OR SUBTRACT FROM, THE TERMS OF THE DOCUMENT.



HALSBURY'S LAWS OF ENGLAND, 3RD ED. VOL. 11 AT PAGE 399,  
STATES AS FOLLOWS:

EVIDENCE OF PREVIOUS NEGOTIATIONS

THE CONSTRUCTION OF A DOCUMENT CANNOT BE CONTROLLED BY PREVIOUS NEGOTIATIONS; AND WHEN A WRITTEN AGREEMENT IS CARRIED INTO EFFECT BY A CONVEYANCE, THE CONVEYANCE BECOMES THE FINAL EVIDENCE OF THE INTENTION OF THE PARTIES, AND IS NOT LIABLE TO BE VARIED BY REFERENCE TO THE AGREEMENT; NOR IS THE CONSTRUCTION OF A WRITTEN INSTRUMENT VARIED BY THE SUBSEQUENT DECLARATION OR CONDUCT OF THE PARTIES. THE INSTRUMENT IS TO BE CONSTRUED AS AT THE TIME OF ITS EXECUTION.

CHITTY ON CONTRACTS - GENERAL PRINCIPLES (21ST ED.),  
AT PAGE 169, USES THE FOLLOWING LANGUAGE IN RESPECT OF EVIDENCE  
ADMISSIBLE TO CONTRADICT OR VARY A WRITTEN CONTRACT:

AS TO THE ADMISSIBILITY OF EVIDENCE TO VARY OR CONTRADICT A WRITTEN CONTRACT THE RULE IS THAT WHERE THERE IS NO AMBIGUITY IN THE WORDS, NO EXPLANATION CONTRARY TO THE WORDS IS TO BE ALLOWED. PAROL EVIDENCE WILL NOT BE ADMITTED TO PROVE THAT SOME PARTICULAR TERM, WHICH HAD BEEN ORALLY AGREED UPON, HAD BEEN OMITTED (BY DESIGN OR OTHERWISE) FROM A WRITTEN INSTRUMENT CONSTITUTING A VALID AND OPERATIVE CONTRACT BETWEEN THE PARTIES. WHERE, THEREFORE, THERE IS NO AMBIGUITY IN THE TERMS USED, THE AGREEMENT OR INSTRUMENT ITSELF IS THE ONLY CRITERION OF THE INTENTION OF THE PARTIES; AND THIS PRINCIPLE EXCLUDES PAROL EVIDENCE CONTRADICTORY TO THE WRITING ITSELF, EVEN THOUGH SUCH EVIDENCE MIGHT CLEARLY SHOW THAT THE REAL INTENTION OF THE PARTIES WAS AT VARIANCE WITH THE PARTICULAR EXPRESSIONS USED IN THE WRITTEN INSTRUMENT . . .

FOR THE ABOVE REASONS, I FIND THAT THE RESPONDENT COMPANY, AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED, PARTY OF THE FIRST PART TO THE COLLECTIVE AGREEMENT, WAS NOT OBLIGED TO BARGAIN WITH THE APPLICANT, BUT ON THE CONTRARY WAS REQUIRED TO BARGAIN WITH THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L. - C.I.O., THE PARTY OF THE SECOND PART TO THE COLLECTIVE AGREEMENT AND THE THIRD PARTY TO THIS PROCEEDING. CONSEQUENTLY, THERE HAS BEEN NO VIOLATION WHATSOEVER OF THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT BY THE RESPONDENT COMPANY, AND I WOULD HAVE DISMISSED THE APPLICATION."

ON JANUARY 5, 1965, THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"IN THE ROYAL YORK CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1961, P. 214, THE BOARD SAID:

IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION. THE REASON FOR THIS PRACTICE IS THE DANGER THAT SUCH REASONS WILL BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE PROSECUTION ITSELF.

IN THE INSTANT CASE WE SEE NO GROUND FOR DEPARTING FROM THIS GENERAL PRINCIPLE.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED IN THIS MATTER FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT HAS FAILED TO BARGAIN WITH THE APPLICANT IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT BETWEEN THEM, PURSUANT TO THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT, ON AND AFTER NOVEMBER 5, 1964.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT FOR THE REASONS GIVEN IN MY INTERIM DECISION OF OCTOBER 28, 1964, WHERE I SAID:

... I FIND THAT THE RESPONDENT COMPANY, AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED, PARTY OF THE FIRST PART TO THE COLLECTIVE AGREEMENT, WAS NOT OBLIGED TO BARGAIN WITH THE APPLICANT, BUT ON THE CONTRARY WAS REQUIRED TO BARGAIN WITH THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A.F. OF L. - C.I.O., THE PARTY OF THE SECOND PART TO THE COLLECTIVE AGREEMENT AND THE THIRD PARTY TO THIS PROCEEDING. CONSEQUENTLY, THERE HAS BEEN NO VIOLATION WHATSOEVER OF THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT BY THE RESPONDENT COMPANY, AND I WOULD HAVE DISMISSED THE APPLICATION."

STATISTICAL TABLES FOR FEBRUARY 1965

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	FEBRUARY 1965	1ST 11 MONTHS OF 1964-65	FISCAL YEAR 1963-64
I. CERTIFICATION	72	851	667
II. DECLARATION TERMINATING BARGAINING RIGHTS	23	97	71
III. DECLARATION OF SUCCESSOR STATUS	3	7	24
IV. CONCILIATION SERVICES	—*	603	1004
V. DECLARATION THAT STRIKE UNLAWFUL	—	35	29
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	—	5	5
VII. CONSENT TO PROSECUTE	2	66	121
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	143	145
X. MISCELLANEOUS	25	48	19
TOTAL	<u>135</u>	<u>1855</u>	<u>2085</u>

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	FEBRUARY 1965	1ST 11 MONTHS OF 1964-65	FISCAL YEAR 1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	87	1042	924

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	FEBRUARY 1965	1ST 11 MONTHS OF 1964-65	FISCAL YEAR 1963-64
I. CERTIFICATION	61	828	706
II. DECLARATION TERMINATING BARGAINING RIGHTS	23	100	93
III. DECLARATION OF SUCCESSOR STATUS	1	7	28
IV. CONCILIATION SERVICES	-*	689	1043
V. DECLARATION THAT STRIKE UNLAWFUL	-	35	29
VI. DECLARATION THAT LOCK-OUT UNLAWFUL	-	5	4
VII. CONSENT TO PROSECUTE	3	67	133
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	157	147
IX. MISCELLANEOUS	<u>3</u>	<u>28</u>	<u>16</u>
TOTAL	<u>97</u>	<u>1916</u>	<u>2199</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	FEBRUARY 1ST 11 MTHS FISCAL YR. 1965	1964-65	1963-64	FEBRUARY 1ST 11 MTHS FISCAL 1965	1964-65	1963-64
I. <u>CERTIFICATION</u>						
GRANTED	38	603	508	810	17502	15318
DISMISSED	15	148	123	354	6580	3959
WITHDRAWN	<u>8</u>	<u>77</u>	<u>75</u>	<u>123</u>	<u>2545</u>	<u>1082</u>
TOTAL	<u><u>61</u></u>	<u><u>828</u></u>	<u><u>706</u></u>	<u><u>1287</u></u>	<u><u>26627</u></u>	<u><u>20359</u></u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	11	48	65	25	615	1599
DISMISSED	21	49	23	35	1175	514
WITHDRAWN	<u>1</u>	<u>3</u>	<u>5</u>	<u>10</u>	<u>92</u>	<u>161</u>
TOTAL	<u><u>23</u></u>	<u><u>100</u></u>	<u><u>93</u></u>	<u><u>70</u></u>	<u><u>1882</u></u>	<u><u>2274</u></u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION (CONTINUED)

	NUMBER OF APPLICATIONS		
	FEBRUARY 1965	1ST 11 MONTHS 1964-65	FISCAL YEAR. 1963-64
III. <u>CONCILIATION SERVICES*</u>			
REFERRED	-	632	968
DISMISSED	-	27	21
WITHDRAWN	-	30	54
	<u>-</u>	<u>689</u>	<u>1043</u>
TOTAL	<u>-</u>	<u>689</u>	<u>1043</u>
IV. <u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
GRANTED	-	13	6
DISMISSED	-	5	3
WITHDRAWN	-	17	20
	<u>-</u>	<u>35</u>	<u>29</u>
TOTAL	<u>-</u>	<u>35</u>	<u>29</u>
V. <u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
GRANTED	-	1	-
DISMISSED	-	1	1
WITHDRAWN	-	3	3
	<u>-</u>	<u>5</u>	<u>4</u>
TOTAL	<u>-</u>	<u>5</u>	<u>4</u>
VI. <u>CONSENT TO PROSECUTE</u>			
GRANTED	-	13	43
DISMISSED	3	17	10
WITHDRAWN	-	37	80
	<u>3</u>	<u>67</u>	<u>133</u>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MTHS FISCAL YEAR 1965	1964-65	1963-64
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	4	21	23
POST-HEARING VOTE	2	31	54
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	8	13
POST-HEARING VOTE	3	51	47
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>	<u>2</u>
TOTAL	<u>10</u>	<u>112</u>	<u>139</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MTHS OF FISCAL YEAR 1965	1964-65	1963-64
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	<u>-</u>	<u>12</u>	<u>30</u>
TOTAL	<u>-</u>	<u>12</u>	<u>35</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

MARCH, 1965

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ONTARIO

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BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

9680-64-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (APPLICANT) v. RICHARDSON, BOND & WRIGHT LTD. (RESPONDENT).

UNIT: "ALL THE EMPLOYEES REGULARLY EMPLOYED BY THE RESPONDENT IN ITS BINDERY OPERATIONS AT OWEN SOUND SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (93 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 638 ).

9701-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE CITY OF EASTVIEW (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT CLERK ADMINISTRATOR, CITY TREASURER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 20, CANADIAN UNION OF PUBLIC EMPLOYEES." (17 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT NURSING STAFF, HOMEMAKERS, CONFIDENTIAL SECRETARY TO THE CITY CLERK AND THE SUPERINTENDENT OF PUBLIC WORKS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT TWO NAMED EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 639 ).

9790-64-R: INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1915 (APPLICANT) v. GREAT LAKES OVERSEAS' PACKING CO. OPERATING AS A DIVISION OF SUMMERHAYES INDUSTRIAL AND WOOD PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MARINE TERMINAL AT PIER NUMBER 10 ON WELLINGTON STREET, HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED UNDER THE WATERLOO UNIVERSITY TRAINING PROGRAM." (36 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 640 ).

9850-64-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, AFFILIATED WITH: HOTEL AND RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO, CANADIAN LABOUR CONGRESS & WINDSOR & DISTRICT LABOUR COUNCIL (APPLICANT) v. WELLINGTON TAVERN (WINDSOR) LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WELLINGTON TAVERN AT WINDSOR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

9909-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL SUPERVISORY ROUTE SALESMEN OF THE RESPONDENT AT TORONTO WHO ARE PERFORMING SUPERVISORY BUT NOT MANAGERIAL DUTIES AND WHO ARE NOT BOUND BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (8 EMPLOYEES IN THE UNIT).

(IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE).

THE BOARD DECLARED THAT EIGHT PERSONS DESIGNATED BY THEIR EMPLOYER AS SUPERVISORS DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE INCLUDED IN THE BARGAINING UNIT.

9929-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) (APPLICANT) V. THE CHUN KING CORPORATION OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (72 EMPLOYEES IN THE UNIT).

9948-64-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS (APPLICANT) V. WELTRONIC COMPANY (CANADIAN DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

9963-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN CURTIS REFRIGERATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT ANY BARGAINING RIGHTS HELD BY THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 520, HAVE PRIOR HERETO BEEN ABANDONED AND, THEREFORE, DO NOT AFFECT THE PRESENT APPLICATION."

10006-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT CHAPLEAU, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

10008-64-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL-CIO-CLC (APPLICANT) v. PARAMOUNT GEAR WORKS, DIVISION OF TURNBULL ELEVATOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

10010-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. SILVERWOOD DAIRIES, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSVILLE, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, SALES MANAGERS, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

10012-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WESTON BAKERIES LIMITED (HAWKESBURY DEPOT) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPOT IN HAWKESBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

10013-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WESTON BAKERIES LIMITED (CORNWALL DEPOT) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPOT IN CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

10018-64-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. POLYCHEMICAL INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CLARKSON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

10021-64-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. PEPSI-COLA CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

10022-64-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SASS MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF CHATHAM, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IS SEEKING A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL.

THE PARTIES HAVE AGREED ON THE FOLLOWING FACTS; TWO OF THE EMPLOYEES PERFORM THEIR WORK ALMOST EXCLUSIVELY IN THE RESPONDENT'S SHOP AND THE REMAINING EMPLOYEES SPEND APPROXIMATELY SEVENTY-FIVE PER CENT OF THEIR TIME IN THE RESPONDENT'S SHOP AND TWENTY-FIVE PER CENT OF THEIR TIME AT WORK ON JOB SITES ON WHICH THE RESPONDENT IS ENGAGED.

HAVING REGARD TO THE NATURE OF THE UNIT SOUGHT THE BOARD FURTHER FINDS THAT THIS IS NOT AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

THE APPLICANT HAS NOT REQUESTED A HEARING IN THIS CASE. THE RESPONDENT IS NOT CONTESTING THE CASE. NO EMPLOYEES HAVE FILED A STATEMENT OF OBJECTIONS OR DESIRE TO MAKE REPRESENTATIONS. IN THESE CIRCUMSTANCES THE BOARD DOES NOT CONSIDER IT NECESSARY TO GIVE FURTHER DIRECTIONS IN THIS CASE (AND SEE SECTION 64(3) OF THE BOARD'S RULES OF PROCEDURE)."

10023-64-R: LOCAL UNION #636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. THE CORPORATION OF THE TOWN OF PORT CREDIT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

10027-64-R: CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION 990, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INTERNATIONAL CO-OPERATIVE STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

10037-64-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O. (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT HAMILTON, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (108 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10040-64-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. PHILLIPS CABLES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ENGINEERING DEPARTMENT TECHNICIANS, SALESMEN, BUYERS, NURSES, SECURITY GUARDS, PERSONNEL DEPARTMENT EMPLOYEES, PAYROLL AND METHODS PERSONNEL AND SECRETARIES TO EXECUTIVE OFFICERS AND PLANT MANAGERS." (76 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT FILED FORM 9 A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS OVER THE SIGNATURE OF JANINE THEORET, THE REPRESENTATIVE OF THE APPLICANT. MISS THEORET DECLARES IN ITEM 1 OF FORM 9 THAT DOCUMENTARY EVIDENCE OF MEMBERSHIP WAS SUBMITTED BY THE APPLICANT ON BEHALF OF 54 PERSONS. ITEM 2 STATES THAT THE DOCUMENTARY EVIDENCE CONSISTS OF 54 COMBINATION APPLICATION FORMS AND RECEIPTS. IN ITEM 3 MISS THEORET DECLARES THAT HER KNOWLEDGE CONCERNING THE COLLECTORS AND THE PERSONS WHOSE NAMES APPEAR ON THE MEMBERSHIP DOCUMENTS WAS BASED ON PERSONAL KNOWLEDGE AND ON INQUIRIES.

THE APPLICANT HAD MADE AN EARLIER APPLICATION FOR CERTIFICATION ON JANUARY 28TH, 1965 FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT (BOARD FILE #9912-64-R). THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) FILED IN THAT APPLICATION WAS ALSO OVER THE SIGNATURE OF JANINE THEORET. IN THAT CASE, HOWEVER, MISS THEORET HAD FAILED TO COMPLETE ITEMS 2 AND 3 OF THE FORM 9. THE ENDORSEMENT WRITTEN BY THE MAJORITY OF THE DIVISION OF THE BOARD THAT HEARD THE EARLIER APPLICATION (DATED FEBRUARY 15TH, 1965) READS IN PART AS FOLLOWS:

AT THE HEARING MISS THEORET WAS GIVEN AN OPPORTUNITY BY THE BOARD TO COMPLETE THE INFORMATION WHICH WAS OMITTED FROM THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) BY VIVA VOCE EVIDENCE. MISS THEORET ADVISED THE BOARD THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH WAS FILED ON BEHALF OF THE 54 EMPLOYEES CONSISTED OF COMBINATION APPLICATION CARDS AND RECEIPTS. HOWEVER, IT WOULD



APPEAR THAT WHILE MISS THEORET HAD PERSONAL KNOWLEDGE WITH RESPECT TO SOME OF THE MEMBERSHIP DOCUMENTS, SHE DID NOT HAVE PERSONAL KNOWLEDGE, NOR DID SHE MAKE INQUIRIES OF THE COLLECTORS WITH RESPECT TO OTHER MEMBERSHIP DOCUMENTS. ON THE ADMISSION OF MISS THEORET, THE BOARD IS IMPELLED TO FIND THAT MISS THEORET DID NOT HAVE THE NECESSARY INFORMATION WHICH WOULD PERMIT HER TO PROPERLY COMPLETE THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9).

THE APPLICATION WAS DISMISSED ON THE BASIS THAT THE FORM 9 WAS NOT COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD'S RULES AND THE MATTER WAS NOT RECTIFIED BY VIVA VOCE EVIDENCE.

COUNSEL FOR THE RESPONDENT SUBMITTED AT THE HEARING OF THE INSTANT APPLICATION ON MARCH 9TH, 1965 THAT IN VIEW OF THE BOARD'S DECISION IN THE PREVIOUS APPLICATION WE SHOULD NOT ACCEPT THE DECLARATION OF MISS THEORET CONTAINED IN THE FORM 9 FILED IN THE INSTANT CASE WITHOUT CONDUCTING A VIVA VOCE EXAMINATION OF MISS THEORET WITH RESPECT TO THE NATURE OF HER INQUIRIES. THE BOARD AT THE MARCH 9TH, 1965 HEARING INQUIRED OF MISS THEORET WHETHER, SINCE THE DATE OF THE HEARING OF THE PREVIOUS APPLICATION, SHE HAD MADE INQUIRIES OF THE COLLECTORS, WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP, TO ENABLE HER TO COMPLETE THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS. MISS THEORET REPLIED IN THE AFFIRMATIVE.

THE EARLIER APPLICATION WAS DISMISSED BECAUSE OF THE FAILURE OF MISS THEORET TO COMPLETE THE FORM 9. THERE IS NO SUGGESTION IN THE DECISION THAT MISS THEORET IN ANY WAY ATTEMPTED TO MISLEAD THE BOARD. IN THE ABSENCE OF ANY IRREGULARITY ON THE FACE OF A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS FILED IN A CERTIFICATION APPLICATION THE BOARD HAS ALWAYS ACCEPTED THE DOCUMENT WITHOUT ANY INQUIRY. HAVING REGARD TO THE POLICY OF THE BOARD, THE FACT THAT THE FORM 9 IS COMPLETED IN THE PRESCRIBED FORM, AND THE STATEMENT OF MISS THEORET THAT SHE HAS MADE THE NECESSARY INQUIRIES TO ENABLE HER TO COMPLETE THE FORM 9, THE BOARD IS OF THE OPINION THAT THERE IS NO REASON TO MAKE ANY FURTHER INQUIRIES OF MISS THEORET."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

IN AN EARLIER APPLICATION FOR CERTIFICATION FILED BY THE SAME APPLICANT UNION ON JANUARY 28TH, 1965 FOR THE SAME UNIT OF EMPLOYEES, THE BOARD FOUND THAT MISS THEORET, A REPRESENTATIVE OF THE APPLICANT, DID NOT HAVE PERSONAL KNOWLEDGE NOR DID SHE MAKE ENQUIRIES OF THE COLLECTORS WITH RESPECT TO SOME OF THE MEMBERSHIP DOCUMENTS FILED IN SUPPORT

OF THE APPLICATION. THE BOARD FURTHER FOUND THAT MISS THEORET DID NOT HAVE THE NECESSARY INFORMATION THAT WOULD PERMIT HER TO PROPERLY COMPLETE THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9). FOR THESE REASONS, THE APPLICATION WAS DISMISSED.

IN THESE CIRCUMSTANCES, AND BEARING IN MIND THAT THE SAME EVIDENCE OF MEMBERSHIP AS FILED IN THE PREVIOUS CASE WAS SUBMITTED AS EVIDENCE OF MEMBERSHIP IN THIS CASE, I BELIEVE THE BOARD SHOULD HAVE ENQUIRED OF MISS THEORET AS TO PRECISELY WHAT ENQUIRIES SHE HAD MADE SUBSEQUENT TO THE HEARING IN THE PREVIOUS CASE THAT ENABLED HER TO BE SUFFICIENTLY KNOWLEDGEABLE TO PROPERLY COMPLETE THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN RESPECT OF ALL THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT. IT MAY WELL BE THAT MISS THEORET MADE THE NECESSARY ENQUIRIES TO AMEND THE DEFICIENCY IN THE PREVIOUS APPLICATION BUT SURELY THE BOARD IS ENTITLED TO KNOW THE NATURE AND EXTENT OF THE ENQUIRIES MADE SO AS TO SATISFY ITSELF ON THIS POINT."

10041-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. ORILLIA SOLDIERS' MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN ORILLIA, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

10042-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. RAMSAY INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 643 ).

10043-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ATLAS TITANIUM LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALESMEN, THE CONFIDENTIAL SECRETARY TO THE GENERAL MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENT OF THE PARTIES).

10046-64-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. GOLDEN RAIL TAVERN (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK EMPLOYED BY THE RESPONDENT AT ITS TAVERN AT HAMILTON." (6 EMPLOYEES IN THE UNIT).

10047-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L. C.I.O. C.L.C. (APPLICANT) V. ASSOCIATED RESTAURANT ENTERPRISES LIMITED CARRYING ON BUSINESS AS FRIAR'S TAVERN (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAP MEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (15 EMPLOYEES IN THE UNIT).

10051-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 248 (APPLICANT) V. MANNIX CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE RESPONDENT REQUESTED A HEARING IN THIS CASE THE BOARD INFORMED THE PARTIES THAT IT CONSIDERED THAT WRITTEN REPRESENTATIONS WOULD BE SUFFICIENT AND DIRECTED THE RESPONDENT TO FILE A STATEMENT OF FACTS ON WHICH IT INTENDED TO RELY TOGETHER WITH ITS ARGUMENT THEREON. HAVING RECEIVED RESPONDENT'S STATEMENT, A COPY OF WHICH WAS FORWARDED TO THE APPLICANT, AND THE APPLICANT HAVING FAILED TO COMMENT THEREON THE BOARD NOW CONSIDERS ITSELF IN A POSITION TO DEAL WITH THE MERITS OF THE CASE.

HAVING REGARD TO THE DECISION OF THIS BOARD IN MANNIX CO. LTD., BOARD FILE #9829-64-R, DATED JANUARY 15, 1965, AND TO THE NATURE OF THE WORK INVOLVED IN THIS CASE, THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT...

IN DEFINING THE BARGAINING UNIT THE BOARD HAS NOT OVERLOOKED THE ARGUMENT OF THE RESPONDENT THAT FOREMAN, RATHER THAN NON-WORKING FOREMAN SHOULD BE EXCLUDED. AS THE RESPONDENT IS AWARE FROM THE BOARD'S PREVIOUS DECISION REFERRED TO ABOVE, IT IS THE POLICY OF THE BOARD TO EXCLUDE NON-WORKING FOREMEN IN CONSTRUCTION INDUSTRY CASES. THE BOARD SEES NO REASON TO DEPART FROM ITS PRACTICE IN THE PRESENT CASE. HOWEVER, SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING RESPECTING THE STATUS OF ANY PERSONS CLAIMED TO EXERCISE MANAGERIAL FUNCTIONS IT IS ALWAYS OPEN TO THE PARTIES TO SEEK CLARIFICATION FROM THE BOARD UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT...

THE RESPONDENT SUBMITS THAT A CERTIFICATE SHOULD NOT ISSUE BY REASON OF THE FACT THAT THE JOB IN QUESTION IN THIS CASE IS COMPLETED AND THE COMPANY DOES NOT FORESEE THE FURTHER USE OF CARPENTERS ON ITS PRESENT CONTRACT. RESPONDENT ALSO OBJECTS TO BEING 'TIED' "TO A BARGAINING UNIT FOR A FIFTY MILE RADIUS OF THE TOWN OF TIMMINS IN PERPETUITY AND FOR WORK NOT YET OBTAINED OR EVEN FORESEEN AT THIS TIME".

THE FIRST OBJECTION, IN OUR VIEW, IS MET BY THE DECISION OF THE BOARD IN SINCLAIR CUT STONE AND CONSTRUCTION COMPANY LIMITED, CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-1954, ¶17009, D.L.S. 7-2123.

SECTION 92(1) OF THE LABOUR RELATIONS ACT ANSWERS THE SECOND OBJECTION. THAT SECTION PROHIBITS THE BOARD FROM CERTIFYING ON A PROJECT BASIS AND DIRECTS THAT THE BARGAINING UNIT BE DETERMINED BY REFERENCE TO A GEOGRAPHIC AREA. THE FIFTY MILE RADIUS USED TO DESCRIBE THE AREA IN THE PRESENT CASE IS ONE ESTABLISHED BY COLLECTIVE BARGAINING AND SUBSEQUENTLY ADOPTED BY THE BOARD AS A REGULAR AREA. REFERENCE IS ALSO MADE TO SECTION 96(1) OF THE LABOUR RELATIONS ACT."

10053-64-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E.I.U., A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. THE BOARD OF EDUCATION OF THE CITY OF STRATFORD (RESPONDENT).

UNIT: "ALL CUSTODIANS, ASSISTANT CUSTODIANS AND CLEANING STAFF EMPLOYED BY THE RESPONDENT IN ITS SCHOOLS FOR LESS THAN 24 HOURS PER WEEK, SAVE AND EXCEPT THOSE BOUND BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE).

10060-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT, V. C. A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED FOR THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

10061-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILL-WRIGHTS, LOCAL 2309 (APPLICANT) V. ALLIED CONVEYOR LTD. (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES EMPLOYED BY THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).



THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD NOTES THAT THE RESPONDENT DOES NOT CLAIM THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE IRON WORKERS DISTRICT COUNCIL OF EASTERN CANADA OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS ENTERED INTO ON JULY 11TH, 1963.

THE EMPLOYEES INVOLVED IN THIS APPLICATION ARE WORKING ON A PLANT EXTENSION PROJECT AT GENERAL MOTORS IN OSHAWA. THE JOB THEREFORE FALLS IN THE REGULAR BOARD AREA #9 WHICH CONSISTS OF PARTS OF THE COUNTIES OF ONTARIO AND DURHAM.

THE APPLICANT PROPOSES AN AREA CONSISTING OF THE COUNTIES OF PEEL, YORK, ONTARIO, DURHAM, NORTHUMBERLAND AND PRINCE EDWARD. THE PROPOSED AREA CUTS ACROSS REGULAR BOARD AREAS 8, 9, 10 AND 12. WE ARE SATISFIED THAT THE APPLICANT HAS AN ESTABLISHED BARGAINING PATTERN FOR THE AREA WHICH IT IS SEEKING IN THIS CASE. THE CASE IS THEREFORE SIMILAR TO THE ANGLIN-NORCROSS ONTARIO LIMITED CASE, BOARD FILE 9681-64-R AND THE CEDARHURST PAVING CO. LIMITED CASE, BOARD FILE 9582-64-R. IN THOSE CASES THE BOARD REFUSED TO DEPART FROM ITS REGULARLY ESTABLISHED AREAS ON THE GROUND THAT IF IT DID SO IT MIGHT WELL MEAN THE ESTABLISHING OF A NUMBER OF DIFFERENT AREAS SEPARATE AND APART FROM ITS REGULAR AREA. THE BOARD ALSO POINTED OUT THAT IT WOULD BE QUITE IMPROPER TO TAKE THE AREA PROPOSED BY THE APPLICANT IN THOSE CASES AS THE APPROPRIATE AREA BINDING ON ALL TRADE UNIONS AND EMPLOYERS WHOSE COLLECTIVE AGREEMENTS CONTAINED AREAS DIFFERING FROM THE ESTABLISHED BOARD AREA. IN THE ANGLIN-NORCROSS CASE THE BOARD WENT ON TO SAY, "SUCH AN AREA WILL HAVE TO AWAIT EITHER APPROPRIATE ACTION BY THE PARTIES THEMSELVES OR A LATER DETERMINATION BY THE BOARD IN A CASE WHERE ALL INTERESTED PERSONS HAVE HAD AN OPPORTUNITY TO MAKE THEIR REPRESENTATIONS". IN OTHER WORDS, THE BOARD TOOK THE POSITION THAT WHILE IT DID NOT NECESSARILY REGARD THE ESTABLISHED BOARD AREA AS BINDING ON ALL UNIONS AND EMPLOYERS, THE TIME WAS NOT OPPORTUNE FOR THE CREATION OF A NEW AREA OR AREAS.

WHILE WE ARE NOT UNSYMPATHETIC TO THE APPLICANT'S POSITION IN THE PRESENT CASE, WE DO NOT CONSIDER THAT OUR PRESENT EXPERIENCE WITH BUILDING AND CONSTRUCTION INDUSTRY CASES WARRANTS THE ESTABLISHMENT OF A NEW AREA IN THIS CASE. IN ANY EVENT, AS WE NOTED ABOVE, BEFORE CREATING A NEW AREA THE BOARD WOULD WANT TO HAVE THE REPRESENTATIONS OF OTHER UNIONS AND EMPLOYERS WHO WOULD BE INTERESTED IN THE DETERMINATION OF AN AREA OR AREAS SEPARATE AND APART FROM THE BOARD'S ESTABLISHED AREAS."

10062-64-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. UNALTA CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH-WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (6 EMPLOYEES IN THE UNIT).

10063-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. WHITE CASTLE MOTOR HOTEL (RESPONDENT).

UNIT: "ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (11 EMPLOYEES IN THE UNIT).

10064-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF COMMISSIONERS OF POLICE OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK EMPLOYED BY THE RESPONDENT AT ITS TAVERN AT HAMILTON." (12 EMPLOYEES IN THE UNIT).

10065-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) v. COURTAULDS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALESMEN, NURSES, SECURITY GUARDS, PERSONNEL DEPARTMENT EMPLOYEES, WORK STANDARDS AND METHODS PERSONNEL, SECRETARIES TO EXECUTIVE OFFICERS, GENERAL MANAGERS AND PLANT MANAGERS." (143 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10071-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) v. BENMORE DEVELOPMENTS (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10072-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CANADIAN LANDIS MACHINE COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

10074-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES ( APPLICANT) V. BRAMPTON PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT MAINTENANCE SUPERVISORS, PERSONS ABOVE THE RANK OF MAINTENANCE SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

10075-64-R: LOCAL 280 OF THE HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HAROLD GROSS LIMITED (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS TOWN TAVERN IN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (18 EMPLOYEES IN THE UNIT).

10077-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SWITSON INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (119 EMPLOYEES IN THE UNIT).

10079-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) V. SWANSEA CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND THOSE PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION AND A COUNCIL OF TRADE UNIONS EFFECTIVE THE 27TH DAY OF APRIL, 1964." (72 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 645 )

10080-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN COBOURG, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (29 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10084-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MAGNETIC METALS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

10085-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CLEANOL SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND DESPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DESPATCHER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (62 EMPLOYEES IN THE UNIT).

10086-64-R: LOCAL UNION 1590 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. AMALGAMATED ELECTRIC CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (225 EMPLOYEES IN THE UNIT).

10095-64-R: LOCAL UNION #1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, 124-SYDNEY ST. S., KITCHENER, ONTARIO (APPLICANT) V. GERRAT CONSTRUCTION LIMITED, ELMIRA ROAD, WATERLOO, ONTARIO (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS BEFORE IT AN AGREED STATEMENT OF FACTS TOGETHER WITH THE POSITION OF THE PARTIES WITH RESPECT TO THESE FACTS. THIS STATEMENT WAS OBTAINED BY THE EXAMINER APPOINTED IN THIS CASE AND THE PARTIES HAVE WAIVED THE ISSUANCE OF A FORMAL REPORT AND HEARING.

ON THE BASIS OF THE STATEMENT THE BOARD FINDS THAT ON THE DAY OF THE MAKING OF THE APPLICATION THE BARGAINING UNIT CONSISTED OF TEN PERSONS. IT IS THE POLICY OF THE BOARD TO INCLUDE IN A CONSTRUCTION INDUSTRY BARGAINING UNIT EMPLOYEES WHO ARE NOT REGARDED AS PERMANENT EMPLOYEES.



AGAIN IN CONSTRUCTION INDUSTRY CASES FOR PURPOSES OF MAKING A COUNT, THE BOARD DOES NOT INCLUDE PERSONS WHO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION."

10099-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. ROBERT McALPINE LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND THOSE PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES HERETO MADE ON THE 27TH DAY OF AUGUST, 1959." (2 EMPLOYEES IN THE UNIT).

(IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD NOTES THAT THE PARTIES APPEAR TO BE IN SUBSTANTIAL AGREEMENT RESPECTING THE MEANING TO BE GIVEN TO "BRIDGES" AND DOES NOT DEEM IT ADVISABLE AT THIS TIME TO DEFINE THE TERM...

AFTER CONSIDERING THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, WE HAVE COME TO THE CONCLUSION THAT WHILE IT MAY HAVE BEEN OPEN TO THE PARTIES UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THEM DATED THE 27TH OF AUGUST, 1959 TO REGARD BRIDGE AND STRUCTURE WORK AS BEING INCLUDED IN THE TERM "ROAD PROJECTS" CONTAINED IN THE AGREEMENT, THE PLAIN FACT OF THE MATTER IS THEY DID NOT DO SO. HAVING REGARD TO THE CONDUCT OF THE PARTIES WHICH, ON RESPONDENT'S ADMISSION, CORRESPONDS TO THE INDUSTRY PRACTICE (AND SEE KILMER VAN NOSTRAND LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1964, P. 309), WE FIND THAT THE SAID AGREEMENT DOES NOT OPERATE AS A BAR TO THE APPLICATION IN SO FAR AS IT RELATES TO BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS. ON THE OTHER HAND, IT IS CLEAR THAT THE COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND LOCAL 506 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA DOES NOT COVER THE EMPLOYEES AFFECTED BY THIS APPLICATION."

10100-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. FRANK VAN BUSSELL & SONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10104-64-R: FOUR WHEEL DRIVE EMPLOYEES' ASSOCIATION (APPLICANT) v. FWD CORPORATION (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (64 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10107-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 527 (APPLICANT) v. T. ANTHONY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10109-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ROSLYN METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSTALLERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10110-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 802 - MILLWORKERS (APPLICANT) v. KOHEN BOX COMPANY (WINDSOR) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (57 EMPLOYEES IN THE UNIT).

10119-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. WESLEY ELECTRIC CO. LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10138-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. GEORGE AND ASMUSSEN LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE AREA PROPOSED BY THE APPLICANT IN THIS CASE IS THE REGULAR BOARD AREA No. 15. THE BOARD SEES NO REASON IN THIS CASE TO DEPART FROM ITS ESTABLISHED AREA."

10142-64-R: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 97 (APPLICANT) V. DOWNSVIEW LATHING CO. LTD. (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (35 EMPLOYEES IN THE UNIT).

10145-64-R: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. PALMA LATHING AND INSULATING (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

10146-64-R: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. STANDON LATHING (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

10148-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 175 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF MATILDA IN THE COUNTY OF DUNDAS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

9934-64-R: GENERAL TRUCK DRIVERS, LOCAL 879, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE VALLEY CAMP COAL COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."  
(4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	4
NUMBER OF BALLOTS CAST	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

THE BOARD NOTED THAT THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, BY ITS LETTER DATED FEBRUARY 3RD, 1965, HAD ABANDONED ITS BARGAINING RIGHTS AND THE BOARD ACCORDINGLY DECLARED THAT THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS NO LONGER REPRESENTS THE EMPLOYEES OF THE VALLEY CAMP COAL COMPANY OF CANADA LIMITED AT PORT COLBORNE, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

9937-64-R: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AFL-CIO-CLC (APPLICANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, MANAGERS, GENERAL FOREMEN, FOREMEN, PROCESS ENGINEERS, SPECIALISTS PROCESS-ENGINEERING, SPECIALISTS TIME-STANDARDS, SPECIALISTS PRODUCTION-CONTROL, SPECIALISTS PROCESS-CONTROL, SPECIALISTS CUSTOMER-PROCEDURES, NURSES, STUDENTS AND EMPLOYEES ON BUSINESS TRAINING COURSES, BUYERS, SENIOR COST CLERKS AND SECRETARY TO THE PLANT MANAGER."  
(20 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON VOTERS' LIST	20
NUMBER OF BALLOTS CAST	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9534-64-R: TEXTILE WORKERS UNION OF AMERICA, CLC., AFL-CIO (APPLICANT) v. HAMILTON AUTOMOTIVE TRIM LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS' LIST	38
NUMBER OF BALLOTS CAST	35
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	8
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

9601-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LIBERTY ORNAMENTAL IRON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF. (144 EMPLOYEES IN THE UNIT).

(BALLOTS NOT COUNTED)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE REASONS GIVEN IN WRITING, THE BOARD IS FURTHER SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

THE BOARD IS THEREFORE OF OPINION THAT THE APPLICANT IS ENTITLED TO THE RELIEF PROVIDED BY SECTION 7(5) OF THE LABOUR RELATIONS ACT AND THE BOARD ACCORDINGLY DETERMINES THAT THE BALLOTS CAST IN THE REPRESENTATION VOTE SHOULD NOT BE COUNTED."

9791-64-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO-CLC (APPLICANT) V. CALVERT DISTILLERS LIMITED (RESPONDENT) V. DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA A.F. OF L.-C.I.O. ON BEHALF OF ITS AFFILIATED LOCAL UNION 73 (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT ONE SECRETARY TO THE SUPERVISORS WHO IS DESIGNATED AS THE ADMINISTRATIVE SECRETARY, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR." (18 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE POSITION OF ADMINISTRATIVE SECRETARY A NAMED EMPLOYEE WAS EXCLUDED FROM THE BARGAINING UNIT.

ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FOUND THAT 3 NAMED PERSONS DESIGNATED AS LABORATORY TECHNICIANS, SHOULD BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEIR DUTIES AND RESPONSIBILITIES ARE SUCH AS TO MAKE THEM INAPPROPRIATE FOR INCLUSION IN AN OFFICE BARGAINING UNIT.

NUMBER OF NAMES ON REVISED VOTERS' LIST	18
NUMBER OF BALLOTS CAST	18
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	15

9831-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT TIMMINS, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (30 EMPLOYEES IN THE UNIT).  
(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	30
NUMBER OF BALLOTS CAST	29
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, IN THE ABOVE BARGAINING UNIT INCLUDES ALL EMPLOYEES OF THE RESPONDENT AT WORK AT ANY TIME DURING THE FOUR PAY-WEEK PERIOD PRIOR TO THE TERMINAL DATE OF THIS APPLICATION."

9919-64-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION No. 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SINNOTT NEWS COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (153 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	153
NUMBER OF BALLOTS CAST	153
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	91
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	59

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE

AGREEMENT OF THE PARTIES THAT ALL EMPLOYEES OF THE RESPONDENT AT BARRIE SUBJECT TO THE EXCLUSIONS NOTED IN THE DESCRIPTION OF THE BARGAINING UNIT ARE INCLUDED IN THE BARGAINING UNIT."

ON FEBRUARY 18, 1965 THE BOARD ORDERED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ON THIS DATE BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE GIVEN NO CREDIT TO THE STATEMENTS OF OBJECTION FILED IN THIS MATTER AND WOULD HAVE CERTIFIED THE APPLICANT."

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

9843-64-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION AFL-CIO-C.L.C. (APPLICANT) V. GRAHAM BELL HOTEL (RESPONDENT). (22 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

9917-64-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (APPLICANT) V. WAVERLEY HOUSE (RESPONDENT).

NOTE: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS BEVERAGE ROOMS AT HAMILTON, SAVE AND EXCEPT MANAGERS, ASSISTANT MANAGERS AND OWNERS." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

9921-64-R: ROLARK CHEQUE SERVICE EMPLOYEES ASSOCIATION (APPLICANT) V. ROLARK CHEQUE SERVICE, DIVISION OF ROLPH CLARK STONE LIMITED (RESPONDENT). (28 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 642 ).

9931-64-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS (APPLICANT) V. HAMILTON BOILER WORKS (RESPONDENT). (5 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE REPRESENTATIVE OF THE UNION INFORMED THE BOARD AT THE HEARING THAT THE PERSONS WHO SIGNED THE APPLICATION FOR MEMBERSHIP CARDS FILED IN THIS CASE WERE LED TO UNDERSTAND, AT THE TIME THEY PAID THE MONEY FOR THEIR INITIATION FEES IN THE SUM OF \$1.00 AND AGREED THAT THE MEMBERSHIP FEES ALREADY PAID SHOULD AGAIN BE APPLIED TO THEIR MEMBERSHIP, THAT ALL SUCH MONEY WOULD BE RETURNED TO THEM IF THIS APPLICATION FOR CERTIFICATION WAS NOT SUCCESSFUL.

THE BOARD IN THE DE LAVAL COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1949-54 TRANSFER BINDER, ¶17,031 AT P. 13,051, STATED:-

THE BOARD HAS STATED ON MANY OCCASIONS THAT A PAYMENT CONDITIONED ON THE OUTCOME OF AN APPLICATION FOR CERTIFICATION IS NOT ACCEPTABLE AS EVIDENCE OF MEMBERSHIP IN SUPPORT OF THAT APPLICATION. SUCH A PAYMENT IS NOT EVIDENCE OF MEMBERSHIP; AT BEST, IT IS EVIDENCE OF A WILLINGNESS TO BECOME A MEMBER IN A CERTAIN EVENTUALITY.

IN THE PARMENTER & BULLOCH MANUFACTURING CO. LIMITED CASE, IBID, ¶17,038 AT P. 13,066, THE BOARD SAID:-

AN EMPLOYEE INDUCED TO ASSOCIATE HIMSELF WITH AN ORGANIZATION ON THE ASSURANCE THAT HE WILL NOT BE EXPECTED TO ASSUME ANY RESPONSIBILITIES EXCEPT ON THE HAPPENING OF A CERTAIN EVENT, NAMELY, CERTIFICATION, IS ENGAGING IN LITTLE MORE THAN A LOTTERY, OF A TYPE WHICH DOES NOT REQUIRE HIM TO PAY FOR HIS TICKET UNLESS HE WINS A PRIZE.

IN THE CIRCUMSTANCES, THERE IS NOTHING TO REBUT THE INFERENCE THAT THE PAYMENTS OF INITIATION AND MEMBERSHIP FEES BY THE PERSONS IN QUESTION WERE MADE BY THEM CONDITIONALLY UPON THE OUTCOME OF THE PRESENT APPLICATION.

HAVING HAD THE OPPORTUNITY OF READING THE DISSSENTING DECISION IN THIS CASE, WE MUST STATE THAT WE TAKE A DIFFERENT VIEW OF THIS EVIDENCE THAN AS EXPRESSED THEREIN.

IN THE RESULT, THE EVIDENCE OF MEMBERSHIP IN THIS CASE DOES NOT MEET THE BOARD'S WELL-ESTABLISHED REQUIREMENTS AND CANNOT BE ACCEPTED.

THE APPLICATION IS DISMISSED."

BOARD MEMBER G. RUSSELL HARVEY DISSSENTED AND SAID:-

"I DISSSENT.



THERE IS CLEAR EVIDENCE IN THIS CASE THAT REMOVES ANY POSSIBLE DOUBT ABOUT CONDITIONAL MONEY PAYMENTS IN SUPPORT OF MEMBERSHIP.

FOLLOWING THE WITHDRAWAL OF A PRIOR APPLICATION FOR CERTIFICATION, AND DURING THE PREPARATION FOR A SECOND APPLICATION WHERE NEW CARDS AND MONEY PAYMENTS WERE MADE, THE EMPLOYEES WERE TOLD THEY COULD HAVE THEIR ORIGINAL MONEY PAYMENTS RETURNED AS THE APPLICANT UNION HAD NO WAY TO ACCOUNT FOR SUCH MONEY IN ITS INTERNAL ACCOUNTING SYSTEM. THE EMPLOYEES REJECTED THE OFFER TO RETURN SUCH MONEY THUS REMOVING ANY POSSIBLE DOUBT ABOUT THE CONDITIONAL NATURE OF THE TRANSACTION BEING USED AS AN INDUCEMENT TO MAKE MEMBERSHIP.

THE EMPLOYEES "PAID FOR THEIR TICKETS" AND DID NOT WIN A PRIZE. THE MONEY PAYMENTS WERE NOT CONDITIONAL OR BASED ON A CERTAIN EVENTUALITY.

THE CIRCUMSTANCES OF THIS CASE ARE EVIDENTLY NOT THOSE CITED IN THE DELEVAL COMPANY LIMITED OR IN THE PARMENTER & BULLOCH MANUFACTURING LIMITED CASES. THE DECISIONS IN THE CITED CASES DEALT ONLY WITH THE PROMISE TO RETURN MONEY IN THE EVENT OF FAILURE TO WIN CERTIFICATION. IN THE RELATED ORIGINAL CASE THE EMPLOYEES REJECTED THE REFUNDING OFFER THUS PROVIDING DOUBLE ASSURANCE THAT NO INFRACTION OF THE BOARD'S RULE OCCURRED OR WAS CONTEMPLATED.

THERE APPEARS TO BE A DIFFERENCE OF OPINION ON THE ORAL REPRESENTATIONS OF THE APPLICANT AT THE HEARING. I DO NOT AGREE THAT THE MEMBERS, FOLLOWING THEIR REFUSAL TO TAKE A REFUND OF THEIR ORIGINAL PAYMENTS, WERE TOLD ALL OF THEIR PAYMENTS WOULD BE RETURNED IN EVENT OF FAILURE IN THE PRESENT APPLICATION.

I FIND A REJECTION OF THIS EVIDENCE IS A MEANINGLESS INTERPRETATION OF THE BOARD'S RULE. IN VIEW OF THE CLEAR EVIDENCE OF THE DESIRES OF THE EMPLOYEES TO TAKE UNION MEMBERSHIP I WOULD ISSUE A CERTIFICATE."

2959-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. THE ROSS MEMORIAL HOSPITAL, LINDSAY, ONTARIO (RESPONDENT). (5 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT WHICH IS PRESENTLY THE BARGAINING AGENT FOR ALL STATIONARY ENGINEERS IN THE BOILER HOUSE OF THE RESPONDENT HOSPITAL SEEKS CERTIFICATION FOR A UNIT OF "ALL MAINTENANCE ENGINEERS".

THERE IS NO INDICATION IN THIS CASE THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, THE APPLICANT OR ANY OTHER UNIONS HAS COMMONLY BARGAINED FOR SUCH PERSONS SEPARATELY AND APART FROM OTHER EMPLOYEES SO AS TO LEAD THE BOARD TO CONSIDER

WHETHER THE UNIT SHOULD BE FOUND TO BE APPROPRIATE UNDER THE CRAFT PROVISIONS OF SECTION 6 (2) OF THE LABOUR RELATIONS ACT (SEE FOR EXAMPLE THE DU PONT OF CANADA LIMITED CASES, 9488-64-R, 9489-64-R, 9490-64-R, 9491-64-R, 9492-64-R, 9493-64-R AND 9494-64-R AND THE CASES REFERRED TO THEREIN). FURTHER, THERE IS NOTHING TO INDICATE, IN THE CIRCUMSTANCES OF THIS CASE, THAT THE UNIT REQUESTED IS AN APPROPRIATE TAG-END TYPE OF UNIT. IN OUR OPINION, ALL THE MAINTENANCE PERSONNEL, NOT ONLY THE MAINTENANCE ENGINEERS, CONSTITUTE PART OF WHAT THE BOARD HAS CUSTOMARILY HELD TO BE AN APPROPRIATE HOSPITAL UNIT. THE APPLICANT SUGGESTS THAT THESE PERSONS WILL BE DENIED COLLECTIVE BARGAINING IF THEY ARE NOT RECOGNIZED AS AN APPROPRIATE UNIT. IF THIS ARGUMENT WERE DECISIVE OF THE MATTER ANY APPLICANT COULD OBTAIN CERTIFICATION FOR WHATEVER GROUP OF EMPLOYEES IT EITHER CHOSE TO ORGANIZE OR WAS SUCCESSFUL IN ORGANIZING. OBVIOUSLY, AS THE BOARD HAS OFTEN SAID, THERE ARE OTHER FACTORS WHICH MUST BE CONSIDERED IN THE DETERMINATION OF AN APPROPRIATE BARGAINING UNIT.

WE ARE UNABLE TO ACCEDE TO THE ARGUMENT OF THE APPLICANT THAT THE UNIT WHICH IT SEEKS IS APPROPRIATE FOR COLLECTIVE BARGAINING."

10005-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROBERTSON-YATES CORPORATION LIMITED (RESPONDENT). (4 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON THE BASIS OF THE EVIDENCE BEFORE US AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE PARTIES ARE BOUND BY A SUBSISTING COLLECTIVE AGREEMENT WHICH COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION.

THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

10068-64-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 188, N.C.C.L. (APPLICANT) V. STARK TRUCK SERVICE (LONDON) LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT ON MARCH 3RD, 1965.

THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION ON DECEMBER 3RD, 1963. NO COLLECTIVE AGREEMENT HAS EVER BEEN ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER.

PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT THIS APPLICATION IS UNTIMELY.

THIS APPLICATION IS THEREFORE DISMISSED."

10147-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (APPLICANT) v. WELCON LIMITED (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTY OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE DATE OF THE MAKING OF THE APPLICATION WAS SATURDAY, MARCH 20TH, 1965, WHEN THE APPLICANT MAILED ITS APPLICATION FOR CERTIFICATION BY REGISTERED MAIL. ON MARCH 19TH, 1965 THE RESPONDENT'S FILINGS REVEAL THAT FOUR EMPLOYEES INCLUDED IN THE BARGAINING UNIT WERE AT WORK. HOWEVER, ON THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT'S FILINGS REVEAL THAT NONE OF THE EMPLOYEES INCLUDED IN THE BARGAINING UNIT WAS AT WORK, AND THAT ON MONDAY, MARCH 22ND, 1965, ONE EMPLOYEE INCLUDED IN THE BARGAINING UNIT WAS AT WORK FOR ONLY ONE HOUR BEFORE REPORTING THAT HE WAS LEAVING THE RESPONDENT'S EMPLOY. THEREFORE, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

DISMISSED SUBSEQUENT TO POST-HEARING VOTE

2844-64-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. BERT STACEY MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AUTOMOBILE SALES STAFF AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST	20
NUMBER OF BALLOTS CAST	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

9924-64-R: THE UNITED STEELWORKERS OF AMERICA (APPLICANT) v. LENNOX INDUSTRIES (CANADA) LTD. (RESPONDENT) v. LENNOX EMPLOYEES UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARD, AND OFFICE STAFF." (77 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST	77
NUMBER OF BALLOTS CAST	77
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	37
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	40

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

10024-64-R: TEXTILE WORKERS UNION OF AMERICA, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. COURTAULDS (CANADA) LTD. (RESPONDENT) (141 EMPLOYEES).

10050-64-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (INTERVENER) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (INTERVENER). (531 EMPLOYEES).

10078-64-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. A. D. ROSS & COMPANY LIMITED (RESPONDENT). (42 EMPLOYEES).

10121-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) V. ALCAN-COLONY LIMITED (RESPONDENT). (10 EMPLOYEES).

10127-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL SILICATES LTD. (RESPONDENT). (57 EMPLOYEES).

10128-64-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. HARRISON CONSTRUCTION (ONTARIO) LTD. (8 EMPLOYEES).

10134-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. A. R. KING COMPANY LIMITED (RESPONDENT). (6 EMPLOYEES).

10137-64-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. YORK LAMP SERVICE (RESPONDENT). (2 EMPLOYEES).

10159-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT). (18 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS  
DISPOSED OF DURING MARCH

9793-64-R: LORNE A. WINTERMUTE MONTY BOUGHNER LARRY K. WILCOX T. STAN McDOWALL LEN R. REIDHEAD, ON BEHALF OF A GROUP OF EMPLOYEES OF WOLVERINE TUBE (DIVISION OF CALUMET & HECLA OF CANADA LTD. (WOLVERINE TUBE DIVISION, LONDON) (APPLICANTS)



V. INTERNATIONAL UNION UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W. A.F.L.-C.I.O.) (RESPONDENT) V. WOLVERINE TUBE DIVISION OF CALUMET & HECLA OF CANADA LTD. (INTERVENER). (GRANTED). (272 EMPLOYEES).

(RE: WOLVERINE TUBE, DIVISION OF CALUMET & HECLA OF CANADA LTD., LONDON, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS' LIST	272
NUMBER OF BALLOTS CAST	168
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	165

9869-64-R: EMPLOYEES OF HAMILTON WORKS OFFICES, CANADIAN INDUSTRIES LTD. (APPLICANT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA (RESPONDENT). (GRANTED). (24 EMPLOYEES).

(RE: CANADIAN INDUSTRIES LIMITED, HAMILTON, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS' LIST	24
NUMBER OF BALLOTS CAST	24
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	10
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	14

2953-64-R: ROLAND SHANK (APPLICANT) V. LOCAL 2486 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). V. ERNEST TAILLEFER (CONTRACTOR) (INTERVENER). (DISMISSED). (10 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS APPLICATION IS MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR TERMINATION OF THE BARGAINING RIGHTS HELD BY THE RESPONDENT TRADE UNION FOR A UNIT OF EMPLOYEES OF THE INTERVENER, ERNEST TAILLEFER (CONTRACTOR).

FILED ALSO WITH THE BOARD WERE 15 INDIVIDUAL DOCUMENTS EXPRESSING SUPPORT FOR THE APPLICATION, 14 OF WHICH ARE SIGNED BY PERSONS WHO WERE IDENTIFIED AS EMPLOYEES OF THE INTERVENER. WHILE THERE IS EVIDENCE BEFORE THE BOARD AS TO THE MANNER IN WHICH THE SIGNATURES WERE SECURED ON THE 14 DOCUMENTS THERE IS NO EVIDENCE RELATING TO THE ORIGATION OR PREPARATION OF THE DOCUMENTS. IN THE ABSENCE OF SUCH EVIDENCE, THE BOARD IS NOT PREPARED TO ACCEPT THE DOCUMENTS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHOSE SIGNATURES APPEAR UPON THEM. THE BOARD ACCORDINGLY DOES NOT GIVE ANY WEIGHT TO THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION.

AFTER ALL THE EVIDENCE HAD BEEN ADDUCED WITH RESPECT TO THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION, COUNSEL FOR THE APPLICANT REQUESTED AN ADJOURNMENT, IF THE BOARD WAS NOT SATISFIED WITH THE EVIDENCE BEFORE IT, IN ORDER TO CALL THE APPLICANT, ROLAND SHANK, (WHO WAS NOT PRESENT AT THE HEARING OF THIS APPLICATION ON FEBRUARY 24TH, 1965) TO GIVE FURTHER EVIDENCE IN SUPPORT OF THE APPLICATION. THE BOARD RESERVED ITS DECISION ON THE REQUEST OF COUNSEL FOR THE APPLICANT. NO REQUEST FOR AN ADJOURNMENT HAD BEEN MADE PRIOR TO THE HEARING OF THE APPLICATION AND NO SATISFACTORY EXPLANATION WAS GIVEN TO THE BOARD AS TO WHY ROLAND SHANK WAS NOT OR COULD NOT HAVE BEEN AVAILABLE TO GIVE TESTIMONY AT THE FEBRUARY 27TH, 1965 HEARING. IN THESE CIRCUMSTANCES, THE BOARD DENIES THE REQUEST OF THE APPLICANT.

THE APPLICANT, HAVING FAILED TO SATISFY THE BOARD THAT NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION, IN ACCORDANCE WITH SECTION 43(3) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS DISMISSED."

9958-64-R: KENNETH GRAHAM ON BEHALF OF EMPLOYEES OF AMALGAMATED ELECTRIC CORPORATION LIMITED (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (U.E.) (GRANTED) (217 EMPLOYEES).

(RE: AMALGAMATED ELECTRIC CORPORATION LIMITED,  
MARKHAM, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS CAREFULLY EXAMINED ALL THE TESTIMONY OF THE WITNESSES RELATING TO THE ORIGINATION, CIRCULATION AND IDENTIFICATION OF THE SIGNATURES ON THE DOCUMENTS FILED IN SUPPORT OF THIS APPLICATION. ON THE BASIS OF ALL THE EVIDENCE BEFORE US, WE MUST FIND THAT THE SIGNATURES ON THE DOCUMENTS IN QUESTION ACCURATELY SIGNIFY THE VOLUNTARY WISHES OF THE SIGNATORIES CONCERNED. THE EVIDENCE BEFORE US ESTABLISHES THAT THIS APPLICATION ORIGINATED WITH THE EMPLOYEES THEMSELVES WHO WERE ACTIVELY AND MATERIALLY ASSISTED BY AN OFFICIAL OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

WE ARE SATISFIED THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF AMALGAMATED ELECTRIC CORPORATION LIMITED IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF FEBRUARY 11TH, 1964, BEING ALL EMPLOYEES OF AMALGAMATED ELECTRIC CORPORATION LIMITED IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION.

THE RESPONDENT UNION, WHICH DID NOT APPEAR AT THE HEARING, HAS STATED TO THE BOARD IN A LETTER DATED FEBRUARY 17TH,

1965, "WE DO NOT WANT TO APPEAR ON A BALLOT IF THE BOARD CONSIDERS THE APPLICATION WORTHY OF CONDUCTING A VOTE". IN THESE CIRCUMSTANCES, WE ARE IMPELLED TO CONSTRUE THIS AS A NOTIFICATION TO THE BOARD, PURSUANT TO SECTION 43(6) OF THE LABOUR RELATIONS ACT, THAT IF THE BOARD FINDS THAT THERE IS MERIT TO THE APPLICATION AND THAT THE EVIDENCE ENTITLES THE APPLICANTS TO A REPRESENTATION VOTE, THE RESPONDENT DOES NOT DESIRE TO CONTINUE TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

IN THE RESULT, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE SAID BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF FEBRUARY 11TH, 1964."

10066-64-R: STARK TRUCK SERVICE (LONDON) LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT). (DISMISSED) (10 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 (2) OF THE LABOUR RELATIONS ACT.

THIS APPLICATION IS THE MOST RECENT OF A SERIES OF THREE SIMILAR APPLICATIONS BROUGHT BY THE APPLICANT FOLLOWING THE CERTIFICATION OF THE RESPONDENT AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON DECEMBER 3RD, 1963. THE FACTS LEADING UP TO THE FIRST APPLICATION MAY BE FOUND RECITED BY THE BOARD IN ITS DECISION DATED JUNE 18TH, 1964, BOARD FILE NO. 8440-64-R.

THE FACTS PRECEDING THE SECOND APPLICATION ARE SET OUT IN THE BOARD'S DECISION DATED JULY 23RD, 1964, BOARD FILE NO. 8855-64-R.

IT APPEARS THAT FOLLOWING THE LAST MENTIONED DECISION OF THE BOARD THERE WAS NO COMMUNICATION BETWEEN THE APPLICANT AND THE RESPONDENT UNTIL JANUARY 14TH, 1965. FOR REASONS BEST KNOWN TO THE APPLICANT NO APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WAS MADE DURING THIS INTERVENING PERIOD.

ON JANUARY 14TH, 1964, TWO REPRESENTATIVES OF THE RESPONDENT ATTENDED AT THE APPLICANT'S OFFICES, AND WHILE THE DETAILS OF THE CONVERSATIONS BETWEEN THESE REPRESENTATIVES AND MR. HARRY H. STARK SR., (AN OFFICER OF THE APPLICANT) ARE IN DISPUTE, IT APPEARS THAT THE APPLICANT'S OPERATIONS WERE DISCUSSED. MR. STARK ALSO ADVISED THE RESPONDENT'S REPRESENTATIVES THAT HE HAD A MEETING SCHEDULED FOR THE FOLLOWING DAY WITH THE ONTARIO HIGHWAY TRANSPORT BOARD.

ON OR ABOUT JANUARY 21ST, 1965, ONE OF THE RESPONDENT'S REPRESENTATIVES TELEPHONED MR. STARK AND WAS ADVISED

BY HIM THAT THE MEETING WITH THE ONTARIO HIGHWAY TRANSPORT BOARD HAD BEEN CANCELLED.

SUBSEQUENTLY, ON FEBRUARY 24TH, 1965, THE RESPONDENT SENT A LETTER BY REGISTERED POST TO THE APPLICANT, WHICH READS AS FOLLOWS:-

"PLEASE BE ADVISED THAT WE REQUEST A MEETING WITH YOUR COMPANY IN ORDER TO FINALIZE NEGOTIATIONS TO A COLLECTIVE AGREEMENT."

THE APPLICANT DID NOT REPLY TO THIS LETTER, NOR HAVE ANY MEETINGS BEEN HELD AS REQUESTED THEREIN.

MR. STARK TESTIFIED THAT IT WAS THIS LETTER WHICH PRECIPITATED THE MAKING OF THE INSTANT APPLICATION ON MARCH 3, 1965.

HAVING REGARD TO THE DECISION OF THE BOARD IN OLIVER LUMBER, O.L.R.B. MONTHLY REPORT, AUGUST, 1963, P. 280 AND THE CASES CITED THEREIN, THE BOARD IS OF OPINION THAT THE RESPONDENT'S LETTER DATED FEBRUARY 24TH, 1965, WAS AN ATTEMPT BY THE RESPONDENT TO SEEK TO BARGAIN WITHIN THE MEANING OF SECTION 45 (2) OF THE ACT.

WHILE THE RESPONDENT MAY HAVE BEEN REMISS IN NOT SEEKING TO BARGAIN AT AN EARLIER DATE, THERE WAS NOTHING TO PREVENT THE APPLICANT FROM MAKING THIS APPLICATION SEVERAL MONTHS EARLIER. THIS APPLICATION WAS ONLY MADE BECAUSE THE RESPONDENT HAS SOUGHT TO BARGAIN FOR A COLLECTIVE AGREEMENT.

SINCE THE RESPONDENT HAS NOT ALLOWED A PERIOD OF SIXTY DAYS TO ELAPSE SINCE IT LAST SOUGHT TO BARGAIN, PRIOR TO THIS APPLICATION BEING MADE, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY.

THIS APPLICATION IS THEREFORE DISMISSED."

10094-64-R: JAMES A. NORTHEY (APPLICANT) INTERNATIONAL TYPOGRAPHICAL UNION, LOCAL 204, KINGSTON, ONTARIO (RESPONDENT). (WITHDRAWN). (2 EMPLOYEES).

(RE: MAXWELL PRINTERS & LITHOGRAPHERS LTD.,  
KINGSTON, ONTARIO).

10113-64-R: RIVERSIDE FISHERIES LTD (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED).

10114-64-R: RIVERSIDE FISHERIES LTD (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED).



10115-64-R: POOLE'S QUALITY FISH MARKET (APPLICANT) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED).

IN EACH OF THE ABOVE APPLICATIONS (10113-64-R, 10114-64-R, AND 10115-64-R) THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON MARCH 12TH, 1965, THE APPLICANT MADE APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

(1) "IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT."

(2) "WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT."

THE BOARD GRANTED CONCILIATION SERVICES TO THE PARTIES IN THIS MATTER ON SEPTEMBER 16TH, 1964.

IT IS OBVIOUS THAT THIS APPLICATION DOES NOT COME WITHIN THE TERMS OF SUBSECTION 1 OF SECTION 45 OF THE ACT. IT IS EQUALLY OBVIOUS THAT THIS APPLICATION DOES NOT COME WITHIN THE TERMS OF SUBSECTION 2 OF SECTION 45 OF THE ACT AS THE APPLICATION WAS NOT MADE BEFORE THE MATTER WAS REFERRED TO CONCILIATION.

IN VIEW OF THESE CIRCUMSTANCES, THIS APPLICATION IS UNTIMELY AND THEREFORE THE BOARD IS OF THE OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED.

PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS DISMISSED."

10172-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. BROTHERHOOD OF PAINTERS, DECORATORS OF AMERICA LOCAL 200 (RESPONDENT). (WITHDRAWN) (11 EMPLOYEES).

(RE: RAMSAY INDUSTRIES LTD.,  
OTTAWA, ONTARIO).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MARCH

10030-64-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #3189 (APPLICANT) v. P.W. GARDINER AND SON LIMITED (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION, THE SUCCESSOR TO CANADIAN WOODWORKERS' UNION, LOCAL 21 WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF P.W. GARDINER & SON LIMITED DEFINED IN A COLLECTIVE AGREEMENT BETWEEN P.W. GARDINER & SON LIMITED AND CANADIAN WOODWORKERS' UNION, LOCAL 21 DATED OCTOBER 19TH, 1959 WHICH AGREEMENT WAS RENEWED BY A MEMORANDUM OF SETTLEMENT DATED MAY 7TH, 1963 WHICH IS EFFECTIVE UNTIL MAY 7TH, 1965.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT IS THE SUCCESSOR TO CANADIAN WOODWORKERS' UNION, LOCAL 21, WHICH WAS A PARTY TO THE AGREEMENT AND MEMORANDUM REFERRED TO WITH P.W. GARDINER & SON LIMITED WILL ISSUE."

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MARCH

10125-64-U: ELLIS DON LIMITED (APPLICANT) v. BRICKLAYERS' AND STONE MASONS' UNION No. 5 - ONTARIO (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

9824-64-U: GENERAL WORKERS' LOCAL 800, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. LOBLAW GROCETERIAS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

9938-64-U: OTTAWA NEWSPAPER GUILD, LOCAL 205 OF AMERICAN NEWSPAPER GUILD (APPLICANT) v. THE OTTAWA CITIZEN, A DIVISION OF THE SOUTHAM COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

9944-64-U: DISTILLERY WORKERS' UNION LOCAL 61, WALKERVILLE, ONTARIO, AFFILIATED WITH THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFFILIATED WITH THE AFL-CIO, CLC-QFL (APPLICANT) v. HIRAM WALKER & SONS LIMITED (RESPONDENT). (WITHDRAWN).

10093-64-U: ROBERT F. MUNDELL (APPLICANT) v. GENERAL REFRACTORIES (CANADA) Co. LTD. (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING MARCH

9873-64-U: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, AFFILIATED WITH: HOTEL AND RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO, CANADIAN LABOUR CONGRESS & WINDSOR & DISTRICT LABOUR COUNCIL (COMPLAINANT) v. WELLINGTON TAVERN (WINDSOR) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON, NEIL CARRUTHERS, WAS DISCHARGED BY THE RESPONDENT BECAUSE OF HIS UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

CARRUTHERS WAS EMPLOYED AS A BARTENDER AT THE TIME THE WELLINGTON TAVERN REOPENED IN MID-OCTOBER 1964. HE TESTIFIED THAT THE LAST DAY THAT HE WORKED FOR THE RESPONDENT WAS ON MONDAY, JANUARY 11TH, TUESDAY, JANUARY 12TH, WAS HIS DAY OFF. CARRUTHERS' EVIDENCE IS THAT ON THE MORNING OF WEDNESDAY, JANUARY 13TH, 1965 HE RECEIVED A TELEPHONE CALL AT HIS HOME FROM WES DELNIA, THE MANAGER OF THE RESPONDENT, AT APPROXIMATELY 11:00 A.M. DELNIA TOLD HIM THAT HE WAS DISCHARGED. CARRUTHERS STATED THAT HE WAS INFORMED THAT AFTERNOON BY JOHN PELECH, THE OWNER OF THE RESPONDENT, THAT HE (CARRUTHERS) WAS DISCHARGED BECAUSE HE HAD NOT BEEN HELPING TO FILL THE COOLER WITH BEER, AT THE CLOSE OF BUSINESS, FOR THE FOLLOWING DAY.

PELECH TESTIFIED THAT HE MADE THE DECISION TO DISCHARGE CARRUTHERS APPROXIMATELY A MONTH AND A HALF PRIOR TO THE ACTUAL DISCHARGE. PELECH'S EVIDENCE IS THAT HIS DECISION WAS MADE AFTER OBSERVING CARRUTHERS' SLOW AND UNSATISFACTORY PERFORMANCE OF HIS DUTIES WHILE BRIEFLY SERVICING THE "KEY ROOM" ONE AFTERNOON. THE DELAY IN EXECUTING HIS DECISION WAS BECAUSE HE HAD NOT FOUND A SUITABLE REPLACEMENT FOR CARRUTHERS. PELECH STATED THAT ON THE AFTERNOON OF JANUARY 11TH, MIKE KERELIUK APPLIED FOR A JOB AS BARTENDER. PELECH HIRED HIM AND INSTRUCTED HIM TO SEE THE MANAGER WES DELNIA THE FOLLOWING DAY, JANUARY 12TH. KERELIUK'S EVIDENCE CORROBORATES THAT OF PELECH WITH RESPECT TO HIS EMPLOYMENT. PELECH TESTIFIED THAT ON JANUARY 12TH HE (PELECH) TOLD DELNIA TO TELEPHONE CARRUTHERS AND DISCHARGE HIM. ON THE MORNING OF JANUARY 13TH HE DISCOVERED THAT DELNIA HAD NOT TELEPHONED CARRUTHERS AND INSTRUCTED HIM TO DO SO IMMEDIATELY.

PELECH TESTIFIED THAT IN ADDITION TO CARRUTHERS BEING TOO SLOW IN THE PERFORMANCE OF HIS JOB, HE (PELECH) HAD RECEIVED COMPLAINTS FROM BOTH OTHER MEMBERS OF THE STAFF AND CUSTOMERS ABOUT CARRUTHERS' DISCOURTEOUS BEHAVIOUR. ALSO PELECH'S EVIDENCE IS THAT CARRUTHERS REFUSED TO ASSIST IN REFILLING THE COOLER WITH BEER AT THE END OF EACH SHIFT, WHICH WAS PART OF HIS DUTIES. MOREOVER, PELECH STATED THAT CARRUTHERS REGULARLY MADE MISTAKES IN PUNCHING ON THE CASH REGISTER THE FOOD ITEMS ON THE CUSTOMERS' BILLS. THIS MEANT THAT HE (PELECH) HAD TO TAKE TIME MOST DAYS TO CORRECT THE MISTAKES.

CARRUTHERS TESTIFIED THAT AT THE CLOSE OF BUSINESS AT 1:00 A.M. HE CLEANED HIS BAR AND RINSED THE GLASSES. IF THE WAITERS

WERE STILL FILLING THE COOLER WITH BEER WHEN HE HAD COMPLETED HIS CLEAN-UP AT THE BAR, HE ASSISTED THEM. CARRUTHERS' EVIDENCE IS THAT HE HAD NEVER BEEN CRITICIZED FOR BEING SLOW AND THAT HE GOT ALONG WITH HIS FELLOW EMPLOYEES. HE ADMITTED THAT HE HAD MADE MISTAKES IN PUNCHING UP THE FOOD ORDERS AND HAD BEEN SPOKEN TO BY PELECH ABOUT THIS. CARRUTHERS STATED THAT MEMBERS OF MANAGEMENT WHO SOMETIMES OPERATED THE CASH REGISTER ALSO MADE THE SAME MISTAKES. THE MISTAKES IN PUNCHING UP THE FOOD HAD NOT RESULTED IN A SHORTAGE OF CASH. THE EVIDENCE OF WILLIAM CUROE AND ANTOINE CHOUINARD, WHO HAD BEEN EMPLOYED AS WAITERS WITH CARRUTHERS, IS THAT CARRUTHERS SATISFACTORILY PERFORMED HIS DUTIES AS A BARTENDER AND THAT HIS SERVICE WAS FASTER THAN THE OTHER PERMANENT BARTENDER.

PELECH TESTIFIED THAT HE RECEIVED THE BOARD'S NOTICE OF THE COMPLAINANT'S APPLICATION FOR CERTIFICATION BY REGISTERED MAIL AT APPROXIMATELY 9:30 A.M. ON JANUARY 13TH, 1965. HIS EVIDENCE IS THAT HE ONLY OPENED THE LETTER AT 3:00 P.M. THAT DAY ALONG WITH THE REST OF THE MAIL. PELECH STATED THAT THE NOTICE FROM THE BOARD WAS THE FIRST HE KNEW OF THE COMPLAINANT'S EFFORTS TO SECURE CERTIFICATION.

THERE ARE DISCREPANCIES IN PELECH'S TESTIMONY RELATING TO THE CONDUCT OF CARRUTHERS, AND PELECH'S EVIDENCE, IN OUR OPINION, GIVES LITTLE SUPPORT TO HIS ALLEGATIONS THAT PELECH WAS AN UNSATISFACTORY EMPLOYEE. THE BOARD, HOWEVER, IS NOT CALLED UPON TO DETERMINE WHETHER PELECH'S ACTION IN DISCHARGING CARRUTHERS WAS FAIR OR JUSTIFIED. THE BOARD'S ONLY CONCERN IS WHETHER PELECH DISCHARGED CARRUTHERS BECAUSE OF HIS UNION ACTIVITIES. IN THIS REGARD, THERE IS NO EVIDENCE BEFORE US AS TO WHETHER OR NOT CARRUTHERS WAS A MEMBER OF THE COMPLAINANT UNION, NOR IS THERE EVIDENCE OF ANY ACTIVITY BY CARRUTHERS ON BEHALF OF THE UNION AT THE WELLINGTON TAVERN. THE ONLY EVIDENCE WHICH IN ANY WAY RELATES CARRUTHERS TO THE COMPLAINANT UNION IS THE ADMISSION BY PELECH THAT HE HAD BEEN TOLD A FEW WEEKS AFTER CARRUTHERS COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT THAT, AT ONE TIME, HE HAD BEEN AN ORGANIZER FOR THE COMPLAINANT UNION. EVEN IF WE ASSUME THAT PELECH KNEW OF THE COMPLAINANT'S APPLICATION FOR CERTIFICATION AFTER RECEIVING THE BOARD'S NOTICE ON THE MORNING OF JANUARY 13TH, BUT PRIOR TO THE ACTUAL DISCHARGE OF CARRUTHERS, PELECH'S EVIDENCE (WHICH IS CONFIRMED BY KERELIUK) IS THAT KERELIUK WAS OFFERED A JOB AS A BARTENDER ON JANUARY 11TH, TWO DAYS PRIOR TO THE RECEIPT OF THE BOARD'S NOTICE.

HAVING REGARD TO THE ABSENCE OF ANY EVIDENCE WHICH RELATES THE DISCHARGE OF CARRUTHERS TO UNION ACTIVITIES ON HIS PART AT THE WELLINGTON TAVERN, THE BOARD IS NOT PREPARED TO FIND THAT CARRUTHERS WAS DISCHARGED FOR UNION ACTIVITIES CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE COMPLAINT ACCORDINGLY IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-



"I DISSENT.

IN MY OPINION, PELECH'S TESTIMONY DOES NOT SUPPORT THE REASONS WHICH HE GIVES FOR THE DISCHARGE OF CARRUTHERS. ON THE CONTRARY, THE EVIDENCE SHOWS CARRUTHERS TO HAVE BEEN A COMPETENT BARTENDER IN CARRYING OUT HIS DUTIES. ALSO, HAVING REGARD TO THE CONFLICTS AND DISCREPANCIES IN PELECH'S EVIDENCE, I WOULD NOT GIVE ANY WEIGHT TO HIS TESTIMONY. IT IS MY BELIEF THAT PELECH KNEW OF THE COMPLAINANT'S APPLICATION FOR CERTIFICATION PRIOR TO CARRUTHERS' DISCHARGE. FURTHER, PELECH KNEW THAT CARRUTHERS, AT ONE TIME, HAD BEEN A MEMBER OF THE COMPLAINANT UNION AND HAD BEEN AN ORGANIZER FOR THAT UNION. IN VIEW OF THE ABSENCE OF ANY SATISFACTORY EXPLANATION BEING GIVEN BY PELECH FOR CARRUTHERS' DISCHARGE, I CAN ONLY CONCLUDE THAT CARRUTHERS WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITIES. I ACCORDINGLY WOULD HAVE DIRECTED HIS REINSTATEMENT AND APPROPRIATE COMPENSATION."

9876-64-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) v. CANADIAN ELECTRIC BOX AND STAMPINGS LIMITED (RESPONDENT).

10028-64-U: INTERNATIONAL UNION UNITED AUTOMOBILE AEROSPACE AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. BLACKSTONE INDUSTRIAL PRODUCTS LIMITED (RESPONDENT).

10035-64-U: HOTEL, RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION LOCAL 197 IN HAMILTON, ONTARIO (COMPLAINANT) v. WAVERLY HOUSE (LTD) IN HAMILTON (RESPONDENT).

10069-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION AFL-CIO-C.L.C. (COMPLAINANT) v. GRAHAM BELL HOTEL (BRANTFORD) (RESPONDENT).

10076-64-U: THOMAS BRADY (COMPLAINANT) v. THE RELIGIOUS HOSPITALIERS OF ST. JOSEPH OF HOTEL DIEU OF ST. CATHARINES (RESPONDENT).

10081-64-U: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, AFFILIATED WITH: HOTEL AND RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO, CANADIAN LABOUR CONGRESS & WINDSOR & DISTRICT LABOUR COUNCIL (COMPLAINANT) v. WELLINGTON TAVERN (RESPONDENT).

10087-64-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION. AFL-CIO-CLC (COMPLAINANT) v. TOWN & COUNTRY DINING ROOM 145 MUTUAL ST., TORONTO (RESPONDENT).

10091-64-U: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (COMPLAINANT) v. GOLDEN RAIL TAVERN, (HAMILTON) (RESPONDENT).

10155-64-R: ROBERT F. MUNDELL (COMPLAINANT) v. GENERAL REFRACTORIES CO. AND MR. F. DALY, REPRESENTATIVE U.M.W. OF AMERICA (RESPONDENT).

RE: LRENCESTO BOARD PURSUANT TO SECTION 79a OF THE ACT DISPOSED OF DURING MARCH

10019-64-M: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (TRADE UNION )V. HENDRIE & COMPANY LTD. (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 646 ).

10020-64-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) V. MATTAGAMI CONSTRUCTION COMPANY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 648 ).

#### INDEXED ENDORSEMENTS - CERTIFICATION

9680-64-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (APPLICANT) V. RICHARDSON, BOND & WRIGHT LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT INDICATES THAT MR. GEORGE HASTON, A PERSON CLASSIFIED BY THE RESPONDENT AS SUPERVISOR, IS IN CHARGE OF ALL THE THIRTY-FIVE EMPLOYEES ON THE THIRD FLOOR OF THE RESPONDENT'S PREMISES. HE SPENDS 100 PER CENT OF HIS TIME SUPERVISING THESE EMPLOYEES. NO OTHER MEMBER OF MANAGEMENT IS LOCATED ON THE 3RD FLOOR. MR. HASTON HAS AUTHORITY TO ARRANGE FOR OVERTIME, TO GRANT PERMISSION FOR EMPLOYEES TO LEAVE WORK EARLY, TO ALLOCATE THE WORK OF ALL THE EMPLOYEES AND TO DIRECT WHICH EMPLOYEES ARE TO DO THE WORK. HE ATTENDS MANAGEMENT MEETINGS AND ATTENDED THE MEETING OF MANAGEMENT WHICH WAS CALLED TO DISCUSS THIS APPLICATION FOR CERTIFICATION. HE INITIALS TIME CARDS WHEN THE EMPLOYEES HAVE FAILED TO PUNCH THEM, AND WHEN EMPLOYEES ARE ABSENT AND THEY SO INFORM THE OFFICE HE IS THE PERSON ADVISED BY THE OFFICE OF THE EMPLOYEES' ABSENCE. WHILE MR. HASTON DOES NOT HAVE THE POWER TO HIRE AND FIRE HE HAS IN FACT RECOMMENDED PERSONS FOR EMPLOYMENT. MR. HASTON IS LOOKED UPON BY THE EMPLOYEES AS HEAD OF HIS DEPARTMENT AS EVIDENCED BY THE FACT THAT A RECENT PUBLICATION PUBLISHED BY THE RESPONDENT COVERING ACTIVITIES OF THE EMPLOYEES CONTAINS A PICTURE OF ELEVEN EMPLOYEES WITH A CAPTION INDICATING THAT THEY ARE "THE LATEST ADDITIONS TO THE STAFF IN GEORGE HASTON'S DEPARTMENT". ANOTHER FACTOR WHICH WE HAVE CONSIDERED IS THE FACT THAT THE RESPONDENT'S ORGANIZATION MANUAL DATED FEBRUARY 1960 WHICH WAS IN USE ON THE DATE THIS APPLICATION WAS MADE, CONTAINS A JOB DESCRIPTION ENTITLED "ASSISTANT FOREMAN HAND OPERATIONS" WHICH DESCRIPTION MR. HASTON IDENTIFIED AS REFERRING TO HIS WORK. MR. HASTON POSSESSES A COPY OF THE ORGANIZATION MANUAL WITH HIS OWN NAME PRINTED THEREON IN GOLD. THE OTHER EMPLOYEES WORKING IN MR. HASTON'S DEPARTMENT DO NOT HAVE A COPY OF THIS MANUAL. THE MANAGEMENT CHART CONTAINED IN THE MANUAL INCLUDES THE POSITION WHICH DESCRIBES MR. HASTON'S JOB. WHILE IT IS TRUE THAT MR. HASTON HAS NEVER BEEN GIVEN THE TITLE ATTRIBUTED TO THE JOB SET OUT IN THE MANUAL, HE IS IN FACT DOING THE WORK WHICH IS DESCRIBED BY THE MANUAL FOR THIS

JOB. IT IS OF INTEREST TO NOTE THAT THERE ARE THIRTY-TWO MANAGEMENT POSITIONS SET FORTH IN THE MANAGEMENT CHART AND THAT THE ASSISTANT GENERAL MANAGER IS RESPONSIBLE FOR PERSONNEL RELATIONS FOR THE 345 EMPLOYEES OF THE RESPONDENT. IN VIEW OF THE ABOVE FUNCTIONS OF MR. HASTON WE ARE IMPULSED TO FIND THAT ALL HIS DUTIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND THAT 100 PER CENT OF HIS TIME IS SPENT IN THE EXERCISE OF THESE FUNCTIONS. WHILE IT IS TRUE THAT THERE ARE OTHER MANAGERIAL FUNCTIONS SUCH AS HIRING AND FIRING EXERCISED BY OTHER PERSONS IN MANAGEMENT, THE FACT THAT THE OTHER MANAGERIAL FUNCTIONS ARE NOT EXERCISED BY MR. HASTON IN NO WAY DETRACTS FROM THE MANAGERIAL FUNCTIONS WHICH HE DOES EXERCISE AND WE ARE THEREFORE IMPULSED TO FIND THAT HE IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

I WOULD HAVE INCLUDED MR. GEORGE HASTON, SUPERVISOR, 3RD FLOOR, HAND OPERATIONS DEPARTMENT, IN THE BARGAINING UNIT. THE EVIDENCE CLEARLY ESTABLISHES THAT HE NEVER CARRIED THE TITLE OF ASSISTANT FOREMAN AND THAT HE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT.

IN HIS 20 YEARS WITH THE COMPANY, HASTON HAS NEVER HIRED ANYONE; NEVER INTERVIEWED ANYONE; NEVER DISCHARGED ANYONE; AND HE UNEQUIVOCALLY STATES THAT HE DOES NOT HAVE THE AUTHORITY TO PERFORM THESE FUNCTIONS. HE IS HOURLY RATED; PUNCHES A TIME CLOCK AND IS PAID FOR OVERTIME WORK. EMPLOYEES HAVE NEVER ASKED HIM FOR A WAGE INCREASE. NEW EMPLOYEES RECEIVE AUTOMATIC WAGE INCREASES FOR THE FIRST TWO YEARS. HE HAS NOT BEEN ASKED TO MAKE AN ASSESSMENT (OF THE WORK PERFORMANCE) OF NEW EMPLOYEES. HE HAS NEVER TOLD AN EMPLOYEE TO WORK HARDER. HE STATES THAT HIS DUTIES HAVE BEEN THE SAME FOR A GOOD NUMBER OF YEARS. IN SHORT, HE CANNOT TAKE ANY INDEPENDENT ACTION THAT WOULD AFFECT THE WAGES AND WORKING CONDITIONS OF AN EMPLOYEE AND SHOULD NOT BE EXCLUDED FROM THE BARGAINING UNIT."

9701-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE CITY OF EASTVIEW (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IT APPEARS FROM THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THAT LIONEL GLADU, (CLASSIFIED BY THE RESPONDENT AS FOREMAN PUBLIC WORKS), EDMOND LAFONTAINE, (CLASSIFIED BY THE RESPONDENT AS FOREMAN PUBLIC WORKS), AND ALFRED LAVERGNE, (CLASSIFIED BY THE RESPONDENT AS FOREMAN WATER WORKS), ARE DIRECTLY RESPONSIBLE TO THE SUPERINTENDENT OF PUBLIC WORKS. THESE THREE FOREMEN ARE PRIMARILY ENGAGED TO SUPERVISE THE MEN ON THE JOB AND WHILE

THEY MAY OCCASIONALLY "GIVE A MAN A HAND" THEY NORMALLY DO NOT WORK. IN THE SUPERVISION OF THE MEN THE FOREMEN ASSIGN WORK TO THE MEN, INSTRUCT THE MEN IN THEIR WORK, REPORT ON THE PROGRESS OF THE MEN, KEEP TIME RECORDS AND DISTRIBUTE THE MEN'S TIME CHARGES TO THE PROPER ACCOUNTS AND THEY "MAY RECOMMEND" PROMOTIONS. WHILE THESE FOREMEN ARE THE FIRST STEP IN THE GRIEVANCE PROCEDURE DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 20, CANADIAN UNION OF PUBLIC EMPLOYEES COVERING THE RESPONDENT'S OUTSIDE EMPLOYEES, IT APPEARS HOWEVER, THAT THE PARTIES TO THE COLLECTIVE AGREEMENT IN PRACTICE BY-PASS THE FOREMEN AND COMMENCE A GRIEVANCE PROCEDURE AT THE SUPERINTENDENT OF PUBLIC WORKS STAGE. THE MEN WORKING UNDER THE FOREMEN ARE HOURLY RATED WHEREAS THE FOREMEN ARE PAID A STRAIGHT SALARY, WHICH IS 20% TO 25% MORE THAN THAT EARNED BY THE MEN WORKING UNDER THEM.

WHILE IT IS ACKNOWLEDGED THAT CERTAIN MANAGEMENT FUNCTIONS SUCH AS HIRING AND FIRING ARE NOT EXERCISED BY THE FOREMEN, THIS IN NO WAY DETRACTS FROM THE MANAGEMENT FUNCTIONS WHICH ARE IN FACT EXERCISED BY THEM. THE FOREMEN ARE ENGAGED PRIMARILY TO EXERCISE MANAGEMENT FUNCTIONS AND FUNCTIONS PERFORMED BY THEM WHICH ARE NOT MANAGEMENT FUNCTIONS ARE ONLY INCIDENTAL TO THEIR PRIMARY DUTIES.

WE THEREFORE FIND ON THE BASIS OF ALL THE EVIDENCE THAT LIONEL GLADU, EDMOND LAFONTAINE AND ALFRED LAVERGNE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT.

I WOULD FIND THAT LIONEL GLADU, EDMOND LAFONTAINE AND ALFRED LAVERGNE WHO ARE CLASSIFIED BY THE RESPONDENT AS FOREMEN, DO NOT POSSESS OR EXERCISE SUFFICIENT MANAGERIAL AUTHORITY TO EXCLUDE THEM FROM THE BARGAINING UNIT."

9790-64-R: INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1915 (APPLICANT) V. GREAT LAKES OVERSEAS' PACKING CO. OPERATING AS A DIVISION OF SUMMERHAYES INDUSTRIAL AND WOOD PRODUCTS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"COUNSEL FOR THE RESPONDENT CONTENDS THAT THERE ARE JURISDICTIONAL LIMITATIONS IN THE CONSTITUTION OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND THE CHARTER OF THE LOCAL WHICH PRECLUDE THE APPLICANT FROM ADMITTING TO MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT. WE HAVE CAREFULLY CONSIDERED ALL THE RELEVANT PROVISIONS OF THE CONSTITUTION, INCLUDING THOSE REFERRED TO IN THE ARGUMENTS OF THE PARTIES, TOGETHER WITH THE CONTENTS OF THE LOCAL'S CHARTER. IN THE JOHN E. RIDDELL



AND SON LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-59 TRANSFER BINDER, ¶16,085 AT P. 12,150, THE BOARD REFERRED TO THE PRINCIPLE WHICH IT ADOPTS IN THE INTERPRETATION OF UNION CONSTITUTIONS FOR SUCH PURPOSES, AS FOLLOWS:-

IN CONSTRUING CONSTITUTIONS OF TRADE UNIONS, IT MUST BE THE UNDERSTANDING OF A LAYMAN RATHER THAN A TECHNICAL INTERPRETATION OF THE WORDS THAT MUST GOVERN. WHAT WE HAVE TO ARRIVE AT IN THIS CASE IS THE INTENTION OF THE RESPONSIBLE BODIES WITHIN THE INTERNATIONAL UNION AS TO THE MEANING OF THE MEMBERSHIP ARTICLE OF THE CONSTITUTION.

IN OUR OPINION, IF THERE IS ANY DOUBT ABOUT THE RESULT OF A STRICT TECHNICAL INTERPRETATION OF THE MEANING OF ARTICLE III OF THE CONSTITUTION AND THE CHARTER, IT IS ABUNDANTLY CLEAR THAT THE INTERPRETATION PLACED ON THEM BY THE RESPONSIBLE PERSONS IN THE INTERNATIONAL AND THE LOCAL IS THAT THEY ARE BROAD ENOUGH TO MAKE ALL THE EMPLOYEES OF THE RESPONDENT IN THE PROPOSED BARGAINING UNIT ELIGIBLE FOR MEMBERSHIP. INDEED, THE EVIDENCE IS THAT 29 OF THE 37 PERSONS IN THE BARGAINING UNIT HAVE IN FACT BEEN TREATED AS ELIGIBLE FOR MEMBERSHIP. HOWEVER, EVEN ON A STRICT TECHNICAL INTERPRETATION, WE ARE CONSTRAINED TO CONCLUDE THAT THE PERSONS IN THE BARGAINING UNIT ARE, AS PROVIDED IN THE CONSTITUTION, EMPLOYED IN WORK "DONE INDIRECTLY IN CONNECTION WITH LOADING - - OF FLOATING STRUCTURES - - INCLUDING THE TRADES AND OCCUPATIONS - - INDIRECTLY ASSOCIATED WITH SUCH OPERATIONS" AND THAT AS CONTEMPLATED BY THE CHARTER THEY ARE EMPLOYED IN CONNECTION WITH "PACKING AND SHIPPING OF AUTOMOBILES AND FREIGHT". IN CONSEQUENCE, THEREFORE, SUCH EMPLOYEES FALL WITHIN THE PURVIEW OF THE UNION'S CONSTITUTIONAL JURISDICTION TO ADMIT THEM AS MEMBERS.

THE UNCONTRADICTED EVIDENCE ADDUCED BY THE UNION WAS THAT THE ALTERATIONS MADE IN THE NUMBER OF THE LOCAL WRITTEN IN THE APPLICATION FOR MEMBERSHIP FORMS WERE MADE WITH THE KNOWLEDGE AND CONSENT OF EACH APPLICANT FOR MEMBERSHIP. ALTHOUGH INFORMED OF THEIR RIGHT TO MAKE REPRESENTATIONS IN THE CASE BY THE NOTICES OF THE APPLICATION AND HEARING POSTED IN THE RESPONDENT'S PLANT, NO REPRESENTATIONS ON THE MATTER WERE MADE AT THE HEARING BY ANY EMPLOYEES WHO HAD SIGNED THE APPLICATION FOR MEMBERSHIP FORMS. IN OUR OPINION, THERE IS NO EVIDENCE TO WARRANT AN INFERENCE THAT ANY OF THE EMPLOYEES WAS MISTAKEN OR MISLED AS TO THE LOCAL FOR WHICH HE WAS APPLYING FOR MEMBERSHIP.

WE FIND THAT THE EMPLOYEES INTENDED TO JOIN THE NEW LOCAL IN RESPECT TO WHICH AN APPLICATION HAD BEEN MADE FOR A CHARTER AND WHICH WAS LATER CHARTERED AS LOCAL 1915. IN OUR OPINION WHATEVER THE NUMBER BY WHICH IT WAS ORIGINALLY AND ERRONEOUSLY DESIGNATED THERE WAS NO MISTAKE AS TO THE PARTICU-

LAR LOCAL INTENDED. ALSO, ACCORDING TO THE EVIDENCE BEFORE US, THE ALTERATIONS WERE ALL MADE AFTER THE CHARTER HAD BEEN ISSUED AND AS INDICATED ABOVE WITH THE KNOWLEDGE AND CONSENT OF THE EMPLOYEES CONCERNED.

IN OUR OPINION, THE FACT THAT THE EVIDENCE OF MEMBERSHIP CAME INTO EXISTENCE, IN THE CIRCUMSTANCES OF THIS CASE, BEFORE THE CHARTER WAS ISSUED TO THE APPLICANT LOCAL DOES NOT INVALIDATE OR WEAKEN IT (SEE THE COCHRANE-DUNLOP HARDWARE LIMITED CASE, (1963) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,268."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

THE APPLICANT TRADE UNION, LOCAL UNION 1915, FILED 29 SIGNED APPLICATION CARDS AND RECEIPTS AS EVIDENCE OF MEMBERSHIP. THERE ARE 37 EMPLOYEES IN THE BARGAINING UNIT.

EIGHT (8) OF THESE APPLICATION CARDS WERE ORIGINALLY MADE OUT FOR LOCAL UNION 1954. SUBSEQUENTLY, THE FIGURE 1954 WAS STRICKEN OUT BY INTERLINEATION AND THE FIGURE 1915 WRITTEN IN NEAR IT. THE INITIALS OF THE PERSON SIGNING THE APPLICATION FOR MEMBERSHIP CARDS AS THE COLLECTOR OF THE INITIATION FEES APPEAR ON EACH CARD WHERE THE ALTERATION IS MADE.

ELEVEN (11) OTHER APPLICATION CARDS WERE ORIGINALLY MADE OUT FOR LOCAL UNION 1955. SUBSEQUENTLY, THE FIGURE 1955 WAS CHANGED TO THE FIGURE 1915 BY WRITING THE FIGURE "1" THROUGH THE FIRST FIGURE "5".

THIS MEANS THAT ONLY TEN (10) OF THE 29 APPLICATION CARDS WERE ORIGINALLY MADE OUT FOR THE APPLICATION, LOCAL UNION 1915.

IN ORDER TO BE CERTAIN THAT THE EMPLOYEES WISH TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH LOCAL UNION 1915, I WOULD HAVE DIRECTED A REPRESENTATION VOTE WITH THE NAME OF LOCAL UNION 1915 APPEARING ON THE BALLOT."

9921-64-R: ROLARK CHEQUE SERVICE EMPLOYEES ASSOCIATION (APPLICANT) v. ROLARK CHEQUE SERVICE, DIVISION OF ROLPH CLARK STONE LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IS AN ASSOCIATION WHOSE MEMBERS ARE EMPLOYEES OF THE RESPONDENT. THE CONSTITUTION AND BY-LAWS OF THE ASSOCIATION WERE FILED WITH THE BOARD (EXHIBIT 1). THESE DOCUMENTS ARE NOT DATED AND BEAR NO SIGNATURE OR OTHER INDICATION OF THEIR ADOPTION, ALTHOUGH THERE WAS EVIDENCE GIVEN AT THE HEARING AS TO THEIR ADOPTION AT A GENERAL MEETING OF EMPLOYEES. THE BOARD NOTES THAT THE CONSTITUTION RESTRICTS MEMBERSHIP TO PERSONS WHO HAVE BEEN IN THE EMPLOY OF THE RESPONDENT FOR THREE MONTHS OR

MORE. IN VIEW OF THE DISPOSITION MADE OF THE PRESENT CASE ON OTHER GROUNDS, THE BOARD MAKES NO FINDING AS TO THE APPLICANT'S STATUS AS A TRADE UNION.

THE BOARD HAS CERTAIN WELL ESTABLISHED REQUIREMENTS AS TO EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF APPLICATIONS FOR CERTIFICATION. THESE REQUIREMENTS INCLUDE (WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL); THAT APPLICATIONS FOR MEMBERSHIP BE MADE IN WRITING, SIGNED BY THE PERSON SAID TO BE A MEMBER OF THE APPLICANT; THAT EACH PERSON SAID TO BE A MEMBER OF THE APPLICANT PAY TO THE APPLICANT, ON HIS OWN BEHALF, AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF THE PRESCRIBED INITIATION FEE OR MONTHLY DUES OF THE APPLICANT; THAT THIS MONEY PAYMENT BE CONFIRMED BY A WRITTEN RECEIPT SIGNED BY THE PERSON WHO COLLECTED THE MONEY AND THAT THIS EVIDENCE BE SUPPORTED BY A DECLARATION IN FORM 9 WITH RESPECT TO THE COLLECTION OF THE MONEY. IT IS DESIRABLE THAT THE RECEIPT FOR THE MONEY PAYMENT BE COUNTERSIGNED BY THE PERSON WHO PAID THE MONEY, AND THE ABSENCE OF COUNTERSIGNATURES MAY LESSEN THE WEIGHT TO BE GIVEN THIS EVIDENCE. BY SECTION 50 (1) OF THE BOARD'S RULES OF PROCEDURE, EVIDENCE OF MEMBERSHIP SHALL NOT BE ACCEPTED BY THE BOARD UNLESS IT IS IN WRITING, SIGNED BY THE EMPLOYEE AND FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

IN THE INSTANT CASE THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE TERMINAL DATE CONSISTED ONLY OF A TYPEWRITTEN LIST OF NAMES HEADED "RECEIPT SHOWING NAMES OF EMPLOYEES WHO ARE NOW - PAYING MEMBERS OF THE ROLARD CHEQUE SERVICE EMPLOYEES' ASSOCIATION". THERE IS NO AMOUNT SHOWN AND THERE ARE NO SIGNATURES OF EMPLOYEES OR COLLECTORS. CLEARLY, THIS EVIDENCE DOES NOT MEET THE STANDARDS WHICH THE BOARD HAS CONSISTENTLY REQUIRED TO BE MET.

AT THE HEARING FURTHER EVIDENCE WAS TENDERED IN THE FORM OF A LIST OF NAMES SIMILAR TO THAT DESCRIBED IN PARAGRAPH 4 ABOVE, BUT BEARING THE SIGNATURES OF THE PERSONS LISTED THEREON. THERE WERE ALSO TENDERED SLIPS OF PAPER BEARING IN EACH CASE THE NAME OF THE ASSOCIATION AND THE SIGNATURE OF AN EMPLOYEE, AND CONTAINING A REQUEST OF THE EMPLOYER TO DEDUCT FROM THE EMPLOYEE'S PAY "DUES AS ASSESSED BY THE ROLARK EMPLOYEES' ASSOCIATION". WHILE THIS EVIDENCE, LIKE THAT DESCRIBED IN PARAGRAPH 4 ABOVE, FAILS TO MEET THE BOARD'S STANDARDS, IT CANNOT BE ACCEPTED IN ANY EVENT, SINCE IT WAS FILED LATER THAN THE TERMINAL DATE FOR THIS APPLICATION AND THUS DOES NOT COMPLY WITH SECTION 50 (1) OF THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS DISMISSED."

10042-64-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. RAMSAY INDUSTRIES LTD. (RESPONDENT).

THE BOARD ENDORSES THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT, LOCAL 93 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, WAS CERTIFIED BY THE BOARD ON MARCH 3RD, 1965 AS THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. THE BOARD'S DECISION RECITES THAT AT THAT TIME THE RESPONDENT HAD FAILED TO FILE A REPLY. NO OTHER TRADE UNION INTERVENED IN THE PROCEEDINGS AND EMPLOYEES DID NOT FILE OBJECTIONS.

SUBSEQUENT TO THE ISSUING OF THE DECISION, THE RESPONDENT FILED A REPLY IN WHICH INTER ALIA IT WAS ALLEGED THAT IT HAD ENTERED INTO A COLLECTIVE AGREEMENT WITH LOCAL 200 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA. SUBSEQUENT TO THIS FILING, LOCAL 200 FILED AN INTERVENTION MAKING THE SAME CLAIM. THE MATTER WAS ACCORDINGLY LISTED FOR HEARING TO CONSIDER THE BOARD'S EARLIER DECISION IN THE LIGHT OF THE ALLEGATIONS BY THE RESPONDENT AND LOCAL 200, HEREINAFTER REFERRED TO AS THE "INTERVENER".

THE EVIDENCE ESTABLISHES THAT THE RESPONDENT AND THE INTERVENER SIGNED AN AGREEMENT ON FEBRUARY 19TH, 1965, THREE DAYS BEFORE THE FILING OF THE PRESENT APPLICATION, IN WHICH THE RESPONDENT RECOGNIZES THE INTERVENER AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR "ALL HOURLY EMPLOYEES" WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. IT IS ADMITTED THAT THE PERSONS COVERED BY THE BOARD'S DECISION OF MARCH 3RD, 1965 ARE HOURLY RATED EMPLOYEES. AT FIRST GLANCE, THEREFORE, IT WOULD APPEAR THAT THE APPLICATION FILED BY THE APPLICANT ON FEBRUARY 22ND, 1965 WAS UNTIMELY.

HOWEVER, WHERE A COLLECTIVE AGREEMENT IS SUBMITTED AS A BAR TO AN APPLICATION DURING THE FIRST YEAR OF ITS OPERATION, THE BOARD REQUIRES THE PARTY RELYING ON THE AGREEMENT TO ESTABLISH THE STATUS AND AUTHENTICITY OF THE AGREEMENT, INCLUDING THE QUESTION AS TO WHETHER THE TRADE UNION REPRESENTED EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. (SEE SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT DEFINING "COLLECTIVE AGREEMENT" IN PART AS "AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER ... AND A TRADE UNION THAT ... REPRESENTS EMPLOYEES OF THE EMPLOYER ..."; NIAGARA CRUSHED STONE CASE (1958) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1955-59, ¶16,118, C.L.S. 76-614; SOVEREIGN CONSTRUCTION COMPANY CASE (1960) C.C.H. CANADIAN LABOUR LAW REPORTS, VOL 2, ¶16,168, C.L.S. 76-683; BROWN'S BREAD CASE (1945) D.L.S. 7-1173, AND SECTION 45A OF THE LABOUR RELATIONS ACT.)

IN THE PRESENT CASE NOT ONLY HAD THE APPLICANT COMMENCED ITS ORGANIZATIONAL CAMPAIGN AT THE TIME THE AGREEMENT WAS SIGNED, BUT IN ADDITION, THE INTERVENER, WHICH WAS NOT THE



CERTIFIED BARGAINING AGENT FOR ANY OF RESPONDENT'S EMPLOYEES, HAD NO MEMBERS ON FEBRUARY 19TH, 1965 AMONG EMPLOYEES OF THE RESPONDENT AND IN FACT HAD NO SUCH MEMBERS UNTIL ON OR ABOUT MARCH 10TH, 1965, A WEEK AFTER THE BOARD HAD ISSUED ITS DECISION. IN THESE CIRCUMSTANCES, IT CAN HARDLY BE ARGUED THAT THE INTERVENER REPRESENTED ANY EMPLOYEES OF THE RESPONDENT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND INDEED, AT ANY TIME PRIOR TO THE ISSUANCE OF THE BOARD'S DECISION. THE FACT THAT FOLLOWING THE SIGNING OF THE AGREEMENT THE REPRESENTATIVE OF THE INTERVENER FELL ILL AND SO WAS UNABLE TO "TALK TO THE EMPLOYEES" CANNOT AFFECT THE SITUATION IN THE CIRCUMSTANCES OF THIS CASE. THE FAULT HERE LIES NOT IN BEING UNABLE TO SIGN UP MEMBERS AFTER THE AGREEMENT WAS SIGNED BUT IN NOT REPRESENTING EMPLOYEES AT THE TIME IT WAS SIGNED. MOREOVER, THE FACT THAT EMPLOYEES, FOLLOWING CERTIFICATION, MAY DECIDE TO JOIN ANOTHER UNION OR DECIDE THEY DO NOT WISH THE CERTIFIED UNION CANNOT AFFECT THE CERTIFICATION ORDER. THEIR RIGHTS AND THOSE OF THE EMPLOYER AND THE CERTIFIED TRADE UNION WILL THEN BE GOVERNED BY OTHER PROVISIONS OF THE LABOUR RELATIONS ACT DEALING WITH COLLECTIVE BARGAINING AND TERMINATION OF BARGAINING RIGHTS.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT SIGNED ON FEBRUARY 19TH, 1965 IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND DOES NOT THEREFORE MAKE THE APPLICATION FILED BY THE APPLICANT ON FEBRUARY 22ND, 1965 AN UNTIMELY ONE. THE BOARD FURTHER FINDS THAT THERE IS NO JUSTIFICATION FOR VARYING OR REVOKING ITS DECISION OF MARCH 3RD, 1965 OR FOR ORDERING A REPRESENTATION VOTE.

THE BOARD NOTES THAT AT THE HEARING ON MARCH 22ND, 1965 CERTAIN QUESTIONS WERE RAISED WHICH WERE NOT GERMANE TO THE MAIN ISSUE BEFORE THE BOARD. NO ATTEMPT IS MADE TO DEAL WITH ANY OF THESE MATTERS, IF INDEED THEY ARE MATTERS REQUIRING CONSIDERATION BY THE BOARD.

SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT RESPECTING THE BARGAINING UNIT, THE ATTENTION OF THOSE PARTIES IS DIRECTED TO THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT."

10079-64-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. SWANSEA CONSTRUCTION COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, LOCAL 183 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, CONSISTED IN PART OF EVIDENCE OF MEMBERSHIP IN ANOTHER LOCAL OF THE SAME PARENT UNION. FOR THIS REASON, AND DESPITE THE FACT THAT THE APPLICANT HAD FILED EVIDENCE

OF MEMBERSHIP IN LOCAL 183 IN EXCESS OF 55% OF THE PERSONS IN THE BARGAINING UNIT, THE BOARD CONSIDERED IT ADVISABLE TO PUT THE MATTER ON FOR HEARING, INTER ALIA, TO OBTAIN THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE MEMBERSHIP EVIDENCE RELATING TO THE OTHER LOCAL. THE BOARD IS NOT CALLED UPON TO MAKE ANY DECISION RESPECTING THIS EVIDENCE, BUT IT DESIRES TO POINT OUT THAT IT INTENDS IN FUTURE CASES, WHERE MEMBERSHIP EVIDENCE IN A LOCAL OTHER THAN THE APPLICANT IS MATERIAL, TO SCRUTINIZE SUCH EVIDENCE WITH THE GREATEST OF CARE. IF THERE HAS BEEN AN ACTUAL TRANSFER FROM ONE LOCAL TO ANOTHER, THE EVIDENCE OF SUCH TRANSFER SHOULD BE FILED WITH THE BOARD AS PART OF THE MEMBERSHIP EVIDENCE SUBMITTED BY AN APPLICANT.

SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT RESPECTING THE BARGAINING UNIT, THE ATTENTION OF THOSE PARTIES IS DIRECTED TO THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT."

INDEXED ENDORSEMENTS- SECTION 79A

10019-64-M: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (TRADE UNION) v. HENDRIE & COMPANY LTD. (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER, PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

COUNSEL FOR THE EMPLOYER TAKES THE POSITION THAT THE BOARD IS WITHOUT JURISDICTION INASMUCH AS THE NATURE OF THE EMPLOYER'S OPERATION IS SUCH AS TO BRING IT, IN MATTERS RELATING TO LABOUR RELATIONS, EXCLUSIVELY WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. IN THIS HE WAS SUPPORTED BY COUNSEL FOR THE BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS, A TRADE UNION WITH WHOM THE EMPLOYER HAS MADE A COLLECTIVE AGREEMENT.

THE EMPLOYER IS A LIMITED COMPANY ENGAGED IN THE MOTOR TRANSPORT OF FREIGHT. UNDER LICENCES ISSUED BY THE PROVINCE OF ONTARIO, THE PROVINCE OF QUEBEC AND THE INTER-STATE COMMERCE COMMISSION OF THE UNITED STATES, THE COMPANY CARRIES FREIGHT IN AND OUT OF THE PROVINCE OF QUEBEC AND THE STATES OF NEW YORK AND MICHIGAN, IN ADDITION TO ITS TRANSPORT OPERATIONS WITHIN ONTARIO. WITH RESPECT TO ITS HAULAGE OF GOODS INTO THE UNITED STATES, ALTHOUGH IT FORMERLY EMPLOYED ITS OWN VEHICLES ON SUCH TRIPS, AND IS LICENCED TO DO SO NOW, ITS PRACTICE IS TO TRANSSHIP GOODS

AT THE INTERNATIONAL BORDER, ENGAGING THE SERVICES OF AMERICAN CARRIERS FOR THE AMERICAN OPERATION OF SUCH TRIPS. IT DOES OPERATE ITS OWN VEHICLES IN QUEBEC.

IT IS ESTIMATED THAT SUCH EXTRA-PROVINCIAL HAULAGE ACCOUNTS FOR ONE AND ONE HALF TO TWO PER CENT OF THE COMPANY'S GROSS ANNUAL REVENUE. THE REVENUE FROM HAULAGE TO QUEBEC IN 1964 WAS APPROXIMATELY \$25,000, AND THAT FROM HAULAGE TO THE UNITED STATES WAS AT LEAST THAT MUCH.

THE BOARD FINDS THAT THE EXTRA-PROVINCIAL BUSINESS OF THE EMPLOYER IS "REGULAR" AND "CONTINUOUS", ALTHOUGH IT IS NOT SCHEDULED. IN MAKING THIS FINDING, THE BOARD HAS REGARD TO THE FOLLOWING STATEMENT OF HAINES, J., IN R. V. COOKSVILLE MAGISTRATE'S COURT, EX PARTE LIQUID CARGO LINES LTD., (1964) 1 O.R. 84, 88:-

IN MY VIEW, THE FACT THAT MANY OF THE APPLICANT'S EXTRA-PROVINCIAL TRIPS ARE NOT MADE AT FIXED TIMES IN ACCORDANCE WITH A PREDETERMINED SCHEDULE DOES NOT COMPEL THE CONCLUSION THAT ITS ACTIVITY IN THAT REGARD IS NOT CONTINUOUS AND REGULAR. VIEWED FROM THE POINT OF VIEW OF THE APPLICANT COMPANY, IT IS CLEAR THAT ITS CUSTOMERS ARE PROVIDED WITH EXTRA-PROVINCIAL SERVICE CONSISTENTLY AND WITHOUT INTERRUPTION WHENEVER THEY APPLY TO THE APPLICANT FOR SUCH SERVICE. THE APPLICANT STANDS READY AT ANY TIME TO ENGAGE IN HAULS OUTSIDE THE BOUNDARIES OF THE PROVINCE OF ONTARIO AT THE INSTANCE OF ANY OF ITS CUSTOMERS, AND FOR THAT PURPOSE HAS GONE TO THE PAINS AND EXPENSE OF ACQUIRING TRANSPORT PERMITS AND LICENCES FROM A NUMBER OF JURISDICTIONS. FURTHER, THE EVIDENCE IS CLEAR THAT IT HAS MADE SUCH TRIPS FREQUENTLY DURING THE PERIOD FOR WHICH FIGURES HAVE BEEN PROVIDED.

THESE REMARKS APPLY TO THE FACTS OF THE INSTANT CASE.

ALTHOUGH THE VOLUME OF EXTRA-PROVINCIAL HAULAGE CARRIED ON BY THE EMPLOYER IS SMALL IN RELATION TO ITS INTRA-PROVINCIAL HAULAGE, THE BOARD IS BOUND TO APPLY, IN THESE CIRCUMSTANCES, THE REMARKS OF McLENNAN, J., IN RE TANK TRUCK TRANSPORT LTD., (1960) 25 D.L.R. (2d) 161, 172:-

- - IF THE FACTS SHOW THAT A PARTICULAR UNDERTAKING IS CONTINUOUS AND REGULAR, AS THE UNDERTAKING IS IN THIS CASE, THEN IT DOES IN FACT CONNECT OR EXTEND AND FALLS WITHIN THE EXCEPTION IN SECTION 92 (10) (A) REGARDLESS OF WHETHER IT IS OF GREATER OR LESS IN EXTENT THAN THAT WHICH IS CARRIED ON WITHIN THE PROVINCE.

THE REFERENCE, OF COURSE, IS TO SECTION 92 (10) (A) OF THE BRITISH NORTH AMERICA ACT WHICH GIVES EXCLUSIVE JURISDICTION TO THE PROVINCIAL LEGISLATURE WITH RESPECT TO LOCAL WORKS AND UNDERTAKINGS OTHER THAN (INTER ALIA) "LINES OF STEAM OR OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE".

IN THE CASE OF R. V. COOKSVILLE MAGISTRATE'S COURT, EX PARTE LIQUID CARGO LINES LTD., SUPRA, ALTHOUGH THE COMPANY HAD NO TERMINAL OUTSIDE ONTARIO, AND ALTHOUGH ONLY 1.06 PER CENT OF ITS LOADS WERE HAULED TO OR FROM POINTS OUTSIDE ONTARIO, IT WAS NEVERTHELESS HELD THAT THE COMPANY'S OPERATIONS AS A WHOLE CONSTITUTED AN UNDERTAKING CONNECTING ONTARIO WITH ANOTHER PROVINCE AND EXTENDING BEYOND THE LIMITS OF THE PROVINCE. THE FACTS OF THE INSTANT CASE ARE NOT MATERIALLY DISTINGUISHABLE FROM THE FACTS OF THE LIQUID CARGO LINES CASE, WHICH THIS BOARD IS BOUND TO FOLLOW.

FOR THESE REASONS THE BOARD FINDS THAT THE OPERATIONS OF THE EMPLOYER CONSTITUTE AN UNDERTAKING CONNECTING ONTARIO WITH ANOTHER PROVINCE, AND EXTENDING BEYOND THE LIMITS OF THE PROVINCE, AND THUS COMING WITHIN THE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA. IN VIEW OF THE DISPOSITION WHICH IT MAKES OF THIS MATTER, THE BOARD EXPRESSES NO OPINION ON THE SUBMISSION MADE BY COUNSEL FOR THE EMPLOYER THAT THE NATURE OF THE EMPLOYER'S OPERATIONS MAKE IT AN INTEGRAL PART OF A "RAILWAY" WITHIN THE MEANING OF SECTION 92 (10) (A) OF THE B.N.A. ACT.

THE BOARD FINDS THAT IT HAS NO JURISDICTION TO DEAL WITH THE QUESTION REFERRED TO IT BY THE MINISTER."

10020-64-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) V. MATTAGAMI CONSTRUCTION COMPANY LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE ACT OF THE QUESTION WHETHER THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669, IS ENTITLED TO REQUIRE THE MATTAGAMI CONSTRUCTION COMPANY LIMITED TO BARGAIN WITH IT.

THE TRADE UNION WAS CERTIFIED BY THIS BOARD AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE EMPLOYER ON OCTOBER 20TH, 1959. ALTHOUGH THE UNION SOUGHT TO BARGAIN WITH THE EMPLOYER FOLLOWING CERTIFICATION, NO BARGAINING WAS IN FACT CARRIED ON, AS THE UNION DID NOT ATTEND WITH A BARGAINING COMMITTEE AT ANY OF THE MEETINGS ARRANGED BETWEEN THE PARTIES. THE EMPLOYER, AS IT WAS THEN ENTITLED TO DO, TOOK THE POSITION THAT IT WOULD NOT BARGAIN IN THE ABSENCE OF A COMMITTEE WHICH



INCLUDED ONE OF ITS EMPLOYEES. AN APPLICATION FOR CONCILIATION SERVICES WAS MADE ON NOVEMBER 17TH, 1959, AND A HEARING WAS HELD ON DECEMBER 8TH, 1959. FOLLOWING THIS, FURTHER MEETINGS WERE HELD, BUT NO BARGAINING TOOK PLACE FOR THE SAME REASONS AS ABOVE INDICATED. DISPOSITION OF THE APPLICATION WAS HELD IN ABEYANCE BY THE BOARD AT THE REQUEST OF THE UNION, WHICH TOOK THE POSITION THAT THE EMPLOYER'S WORK FORCE WAS NOT AT ITS NORMAL STRENGTH. AT THE BOARD'S REQUEST, THE EMPLOYER REPORTED PERIODICALLY THE NUMBER OF CARPENTERS IN ITS EMPLOY. ON DECEMBER 2ND, 1960, THE APPLICATION FOR CONCILIATION SERVICES WAS DISMISSED BY THE BOARD WITHOUT PREJUDICE TO THE UNION'S RIGHTS TO APPLY AGAIN. ON DECEMBER 28TH, 1964, THE UNION APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER. THE EMPLOYER NOW TAKES THE POSITION THAT THE UNION HAS ABANDONED ITS BARGAINING RIGHTS AND THIS, IN ESSENCE, IS THE QUESTION REFERRED TO THE BOARD.

SINCE THE DISMISSAL OF THE APPLICATION FOR CONCILIATION SERVICES ON DECEMBER 2ND, 1960, THERE HAS BEEN NO BARGAINING BETWEEN THE PARTIES. NO NOTICE OF DESIRE TO BARGAIN WAS GIVEN SINCE THE FIRST NOTICE GIVEN ON NOVEMBER 7TH, 1959, UNTIL OCTOBER 27TH, 1964, WHEN NOTICE OF DESIRE TO BARGAIN WAS GIVEN PRIOR TO THE COMMENCEMENT OF THIS PROCEEDING. THE EMPLOYER SUPPORTS ITS CONTENTION THAT THE UNION HAS ABANDONED ITS BARGAINING RIGHTS BY ASSERTING THAT THE UNION MADE NO ATTEMPT TO BARGAIN BETWEEN THE TIME WHEN ITS EARLIER APPLICATION FOR CONCILIATION SERVICES WAS DISMISSED AND THE 27TH OF OCTOBER, 1964, A PERIOD OF NEARLY FOUR YEARS.

THE UNION DENIES THAT IT ABANDONED ITS BARGAINING RIGHTS. IN SUPPORT OF THIS POSITION, MR. LEWIS REFERRED TO THE AGREED FACTS (1) THAT, IN A SERIES OF MEETINGS HELD BETWEEN THE UNION AND TWO OTHER EMPLOYERS IN THE EARLY PART OF 1962, THIS EMPLOYER WAS A PARTICIPANT, AND (2) THAT FROM TIME TO TIME THROUGHOUT THE FOUR YEARS IN QUESTION A REPRESENTATIVE OF THE UNION ATTENDED AT THE PREMISES OF THE EMPLOYER AND SPOKE TO SOME OF ITS EMPLOYEES.

AS TO (1), IT IS TO BE NOTED THAT THE NEGOTIATIONS IN QUESTION WERE CARRIED ON BETWEEN TWO OTHER CONTRACTORS AND DID NOT INVOLVE THE EMPLOYER, NOR WAS HE REQUESTED BY THE UNION TO PARTICIPATE IN THEM AS A MEMBER. INDEED, AN OFFICER OF THE UNION WROTE TO THE EMPLOYER ADVISING IT THAT IF THE EMPLOYER WERE TO APPEAR AS A "CONSULTANT" AT THE NEGOTIATIONS, THE UNION WAIVED "ANY RIGHT TO CLAIM THAT NEGOTIATIONS HAVE BEEN CARRIED ON BETWEEN THE UNION AND MATTAGAMI CONST. CO. LTD.". WHILE THIS INCIDENT MAY SHOW THAT THE PARTIES HAD IT IN CONTEMPLATION IN EARLY 1962 THAT THE UNION WAS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE EMPLOYER (AS WAS THE CASE), IT ESTABLISHED NOTHING AS FAR AS THE UNION'S ACTIVITY AS BARGAINING AGENT IS CONCERNED.

AS TO (2), THERE IS NO EVIDENCE AS TO THE NATURE OF ANY OF THE DISCUSSIONS WHICH THE UNION REPRESENTATIVE MAY HAVE HAD WITH ANY PERSONS ON THE COMPANY'S PREMISES OR JOB SITES, ALTHOUGH

IT IS CLEAR THAT ON THESE OCCASIONS THERE WAS NO BARGAINING NOR ANY REQUEST FOR BARGAINING.

IN CASES IN WHICH THE BOARD HAS DEALT WITH THE MATTER OF ABANDONMENT OF BARGAINING RIGHTS, THE QUESTION HAS BEEN WHETHER A UNION "SLEPT ON ITS RIGHTS" FOR A PROTRACTED PERIOD; THAT IS, WHETHER ANY ATTEMPT TO BARGAIN WAS MADE DURING THE PERIOD IN QUESTION. THUS, IN THE HALLIDAY FUELS LIMITED CASE, 1955, C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,021, THE BOARD STATED, "IT WOULD APPEAR FROM THE EVIDENCE PRESENTED AT THE HEARING THAT THE UNION MADE NO ATTEMPT TO BARGAIN WITH THE RESPONDENT BETWEEN JULY 31, 1951, AND THE DATE WHEN THE PRESENT APPLICATION WAS FILED AND THERE WAS NO OBSTACLE TO SUCH BARGAINING DURING THAT PERIOD. IN THE CIRCUMSTANCES, THE UNION MUST BE TAKEN TO HAVE ABANDONED THE BARGAINING RIGHTS IT ACQUIRED UNDER THAT CERTIFICATE". THIS STATEMENT APPLIES IN THE INSTANT CASE, WHERE, IT WILL BE NOTED, THE PERIOD OF TIME INVOLVED IS APPROXIMATELY THE SAME, THAT IS, ABOUT FOUR YEARS. FURTHER CONFIRMATION THAT THE QUESTION TO BE ASKED IS WHETHER ANY ATTEMPT TO BARGAIN WAS MADE, MAY BE FOUND IN THE SOUTHAM COMPANY LIMITED CASE, 1959, C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,130. IN THAT CASE THE UNION HAD BEEN ON STRIKE AGAINST THE EMPLOYER FOR A NUMBER OF YEARS AND HAD EXPENDED A LARGE SUM OF MONEY IN FURTHERING THE STRIKE. "NEVERTHELESS", THE BOARD STATED, "WHILE IT IS CLEAR THAT IT ACTIVELY THROUGHOUT THE INTERVENING PERIOD PUBLICIZED THE FACT THAT THERE HAS BEEN A DISRUPTION OF THE RELATIONSHIP BETWEEN ITSELF AND THE RESPONDENT COMPANY, THERE IS NOT A TITTLE OF EVIDENCE TO SHOW THAT IN RECENT YEARS IT HAS MADE ANY ATTEMPT WHATSOEVER TO BARGAIN WITH THE EMPLOYER ON BEHALF OF THE EMPLOYEES CONCERNED". IT WAS HELD THAT THE UNION WAS NO LONGER ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN WITH IT.

IN THE CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD FINDS THAT THE TRADE UNION ABANDONED ITS BARGAINING RIGHTS AND THAT IT IS NO LONGER ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN WITH IT."

#### TRUSTEESHIP REPORTS

T-17-63      CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY: AND

T-18-63      UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL UNION 27, 666, 681, 1190, 1487, 1747, 1963, 2309,  
2679, 2914-S, 2956, 2965, 2968, 3219, 3227 AND 3233:

A LETTER FROM THE ASSISTANT GENERAL COUNSEL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA DATED JANUARY 15, 1965, STATES THAT, AS OF DECEMBER 17, 1964, THE UNITED BROTHERHOOD TERMINATED ALL SUPERVISION BOTH OVER THE TORONTO DISTRICT COUNCIL AND ALL ITS AFFILIATED LOCALS.

T-17A-64

GREATER TORONTO TEXTILE JOINT BOARD: "SUPERVISION" ASSUMED AUGUST 14, 1964. CHARLES CLARK APPOINTED ADMINISTRATOR ON AUTHORITY OF EXECUTIVE COUNCIL, TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC. REPORT FILED BY WILLIAM POLLOCK, GENERAL PRESIDENT, AND JOHN CHUPKA, GENERAL SECRETARY-TREASURER.

T-19-64

INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 672, AT OTTAWA, TAKEN INTO TRUSTEESHIP SEPTEMBER 1, 1964, UNDER SUPERVISION OF ROBERT LEWIS, SPECIAL REPRESENTATIVE, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY WALTER L. MITCHELL, INTERNATIONAL PRESIDENT. REPORT FILED BY WALTER L. MITCHELL, INTERNATIONAL PRESIDENT AND MARSHALL SHAFER, INTERNATIONAL SECRETARY-TREASURER. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "INDEFINITE (LESS THAN TWELVE MONTHS) - IF LONGER PERIOD NECESSARY, WILL SEEK BOARD PERMISSION."

T-20-64

UNITED STEELWORKERS OF AMERICA, LOCAL 5446, AT LONDON, TAKEN INTO TRUSTEESHIP DECEMBER 15, 1964, UNDER SUPERVISION OF HAROLD RAYNER, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY THE INTERNATIONAL EXECUTIVE BOARD OF THE UNITED STEELWORKERS OF AMERICA. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "UNTIL FURTHER INSTRUCTED".

T-21-65

UNITED STEELWORKERS OF AMERICA, LOCAL 5662, AT ELLIOT LAKE, TAKEN INTO TRUSTEESHIP ON JANUARY 13, 1965, UNDER SUPERVISION OF ALCIDE BRUNET, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY THE INTERNATIONAL EXECUTIVE BOARD OF THE UNITED STEELWORKERS OF AMERICA. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "UNTIL FURTHER INSTRUCTED".

T-22-65

HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES, LOCAL 261, AT OTTAWA, TAKEN INTO TRUSTEESHIP JANUARY 4, 1965, UNDER SUPERVISION OF GASTON A. RAMAT, INTERNATIONAL REPRESENTATIVE, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY ED. S. MILLER GENERAL PRESIDENT, AND ROBERT L. DIEFENBACH, GENERAL SECRETARY-TREASURER. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "AT THE PRESENT TIME THE DURATION OF SUPERVISION OR CONTROL OVER SAID SUBORDINATE TRADE UNION IS NOT ASCERTAINABLE IN LIGHT OF THE SERIOUS FINANCIAL CONDITION OF SAID UNION AND, FURTHER, IN LIGHT OF THE DETERIORATED CONDITION OF ALL ITS AFFAIRS."

T-23-65

UNITED STEELWORKERS OF AMERICA, LOCAL 5463, AT PORT ARTHUR, TAKEN INTO TRUSTEESHIP MARCH 12, 1965, UNDER SUPERVISION OF MR. OLIVER BRETON, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY THE INTERNATIONAL EXECUTIVE BOARD OF UNITED STEELWORKERS OF AMERICA, ON RECOMMENDATION OF MR. LARRY SEFTON, DIRECTOR DISTRICT 6, UNITED STEELWORKERS OF AMERICA. REPORT FILED BY WILLIAM MAHONEY, NATIONAL DIRECTOR FOR CANADA. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "UNTIL FURTHER INSTRUCTED."

T-24-65

UNITED STEELWORKERS OF AMERICA, LOCAL 3162 AT RENFREW, ONTARIO TAKEN INTO TRUSTEESHIP MARCH 26, 1965, UNDER SUPERVISION OF MR. ERNEST BRIGENSHAW, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY THE INTERNATIONAL EXECUTIVE BOARD OF UNITED STEELWORKERS OF AMERICA, ON RECOMMENDATION OF MR. LAWRENCE SEFTON, DIRECTOR DISTRICT 6, UNITED STEELWORKERS OF AMERICA. REPORT FILED BY WILLIAM MAHONEY, NATIONAL DIRECTOR FOR CANADA. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "UNTIL FURTHER INSTRUCTED."

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ERRATUM

IN THE JANUARY 1965 MONTHLY REPORT, PAGE 524 SHOULD HAVE BEEN PAGE 523 AND PAGE 523 SHOULD HAVE BEEN PAGE 524.



STATISTICAL TABLES FOR MARCH 1965

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MAR. 1965	1ST 12 MONTHS OF FISCAL YR. 1964-65	1963-64
I. CERTIFICATION	100	951	737
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	107	77
III. DECLARATION OF SUCCESSOR STATUS	2	9	28
IV. CONCILIATION SERVICES	—*	603	1198
V. DECLARATION THAT STRIKE UNLAWFUL	1	36	29
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	—	5	5
VII. CONSENT TO PROSECUTE	2	68	192
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	158	169
X. MISCELLANEOUS	7	55	20
TOTAL	<u>137</u>	<u>1992</u>	<u>2455</u>

\* AS OF OCTOBER 1, 1964, APPLICATIONS FOR CONCILIATION SERVICES HAVE BEEN FILED WITH THE MINISTER OF LABOUR.

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	MAR. 1965	1ST 12 MONTHS OF FISCAL YR. 1964-65	1963-64
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	120	1162	1027

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MARCH 1965	1ST 12 MTHS OF FISCAL YR. 1964-65                      1963-64	
I. CERTIFICATION	82	910	777
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	110	98
III. DECLARATION OF SUCCESSOR STATUS	1	8	30
IV. CONCILIATION SERVICES	-	689	1153
V. DECLARATION THAT STRIKE UNLAWFUL	1	36	30
VI. DECLARATION THAT LOCK- OUT UNLAWFUL	-	5	5
VII. CONSENT TO PROSECUTE	4	71	203
VIII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	167	167
IX. MISCELLANEOUS	2	30	18
TOTAL	<u>110</u>	<u>2026</u>	<u>2481</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
MARCH 1ST 1965	12 MONTHS 1964-65	FISCAL YR. 1963-64	MARCH 1ST 1965	12 MTHS 1964-65	FISCAL YR. 1963-64

I. CERTIFICATION

GRANTED	63	666	560	1995	19497	16976
DISMISSED	10	158	139	181	6761	4942
WITHDRAWN	<u>9</u>	<u>86</u>	<u>78</u>	<u>815</u>	<u>3360</u>	<u>1119</u>
TOTAL	<u>82</u>	<u>910</u>	<u>777</u>	<u>2991</u>	<u>29618</u>	<u>23037</u>

II. TERMINATION  
OF BARGAINING  
RIGHTS

GRANTED	3	51	68	513	1128	1607
DISMISSED	5	54	25	46	1221	659
WITHDRAWN	<u>2</u>	<u>5</u>	<u>5</u>	<u>13</u>	<u>105</u>	<u>161</u>
TOTAL	<u>10</u>	<u>110</u>	<u>98</u>	<u>572</u>	<u>2454</u>	<u>2427</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		MARCH	1ST 12 MONTHS FISCAL YEAR.	
		1965	1964-65	1963-64
III. <u>CONCILIATION SERVICES*</u>				
	REFERRED	-	632	1058
	DISMISSED	-	27	21
	WITHDRAWN	-	<u>30</u>	<u>74</u>
	TOTAL	-	<u>689</u>	<u>1153</u>
IV. <u>DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
	GRANTED	-	13	7
	DISMISSED	-	5	3
	WITHDRAWN	<u>1</u>	<u>18</u>	<u>20</u>
	TOTAL	<u>1</u>	<u>36</u>	<u>30</u>
V. <u>DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
	GRANTED	-	1	-
	DISMISSED	-	1	1
	WITHDRAWN	-	<u>3</u>	<u>4</u>
	TOTAL	-	<u>5</u>	<u>5</u>
VI. <u>CONSENT TO PROSECUTE</u>				
	GRANTED	-	13	43
	DISMISSED	-	17	11
	WITHDRAWN	<u>4</u>	<u>41</u>	<u>149</u>
	TOTAL	<u>4</u>	<u>71</u>	<u>203</u>

\*INCLUDES APPLICATION FOR CONCILIATION SERVICES  
RE UNIONS CLAIMING SUCCESSOR STATUS.



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>MARCH</u> <u>1965</u>	<u>1ST 12 MONTHS FISCAL YEAR</u> <u>1964-65</u>	<u>1963-64</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	23	26
POST-HEARING VOTE	5	36	58
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	8	14
POST-HEARING VOTE	2	53	49
BALLOTS NOT COUNTED	-	1	2
TOTAL	<u>9</u>	<u>121</u>	<u>149</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>MARCH</u> <u>1965</u>	<u>1ST 12 MONTHS FISCAL YEAR</u> <u>1964-65</u>	<u>1963-64</u>
*RESPONDENT UNION SUCCESSFUL	-	-	5
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>14</u>	<u>34</u>
TOTAL	<u>2</u>	<u>14</u>	<u>39</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.











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